

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MC ALLEN DIVISION

UNITED STATES OF AMERICA,)	CRIMINAL
)	
Plaintiff,)	McAllen, Texas
)	Wednesday, July 19, 2017
vs.)	(9:03 a.m. to 10:37 a.m.)
)	(10:45 a.m. to 11:47 a.m.)
)	
JESUS MURILLO,)	CASE NO: 7:16-CR-01612-1
MARELLA SANDOVAL,)	CASE NO: 7:16-CR-01612-2
MIGUEL CERVANTES, JR.,)	CASE NO: 7:16-CR-01612-3
RENE HERNANDEZ,)	CASE NO: 7:16-CR-01612-5
FELIX HERNANDEZ,)	CASE NO: 7:16-CR-01612-6
)	
Defendants.)	

SENTENCING

BEFORE THE HONORABLE MICAELA ALVAREZ,
UNITED STATES DISTRICT JUDGE

Appearances: See Next Page

Court Recorder: Candy Jones

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General Order 94-15, United States District Court,
Southern District of Texas.**

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1 McAllen, Texas; Wednesday, July 19, 2017; 9:03 a.m.

2 (Call to order)

3 THE COURT: This is Case Number 17-1612 [sic], as to
4 Jesus Murillo.

5 MR. LOPEZ: Good morning, your Honor, Bob Lopez on
6 behalf of the Government, your Honor.

7 MR. BALLESTEROS: Good morning, your Honor, Alejandro
8 Ballesteros on behalf of Mr. Murillo who's present and ready.

9 THE COURT: Thank you. Let me have the Defendants
10 remain seated until we're ready to proceed here, okay? But I
11 will take the announcements. And as to Marella Sandoval?

12 MS. GUTIERREZ: Your Honor, Lilly Gutierrez on behalf
13 of Ms. Sandoval. We're present and ready for sentencing.

14 THE COURT: Thank you. Miguel Cervantes?

15 MR. GARCIA: Your Honor, Daniel Garcia on behalf of
16 Mr. Cervantes, we're present and ready.

17 THE COURT: And Mr. Cervantes is present there, yes?
18 Okay, thank you. Rene Hernandez?

19 MR. ROMERO: Good morning, your Honor, Glenn Romero
20 on behalf of Mr. Hernandez. We're present and ready for
21 sentencing.

22 THE COURT: Thank you. And Felix Hernandez?

23 MR. GARZA: Your Honor, Richard Garza here, we're
24 present, we're also ready, Judge.

25 THE COURT: All right, thank you. Okay, because you

1 have various objections, some of which may be similar and some
2 of which are distinct, I want to go through those first before
3 I have all the parties standing in front of me. I think it'll
4 be much more convenient for whoever's not involved in that
5 particular one to remain seated. If there is anything that any
6 one of those attorneys wants to input as to any other issue
7 that comes up with a different defendant, I'm certainly willing
8 to hear from you, but I just think it'll be easier to sort of
9 work these through one by one.

10 **MR. LOPEZ:** I agree, your Honor. And to the extent I
11 don't know if the Court feels it more convenient or
12 appropriate, I do have my case agent, Vincent Rubbo, here that
13 I intend to place -- to testify regarding this whole conspiracy
14 and the actors. I don't know if the Court would prefer that we
15 do that before addressing those objections or after. I don't
16 know what the Court feels most convenient.

17 **THE COURT:** Well, in that regard, is his testimony
18 just general testimony as to ultimately what the Court should
19 do based on the offense, or is it going to a particular issue
20 as to any one Defendant, or both?

21 **MR. LOPEZ:** Your Honor, this is going more so to the
22 relevant conduct scope of --

23 **THE COURT:** Okay.

24 **MR. LOPEZ:** -- the scheme in terms of the
25 hierarchy --

1 **THE COURT:** Okay.

2 **MR. LOPEZ:** -- and in terms of each particular
3 Defendant's position within that hierarchy, --

4 **THE COURT:** Okay.

5 **MR. LOPEZ:** -- more so to speak, your Honor.

6 **THE COURT:** Okay, well, in light of that then,
7 because there are some issues as far as some of the
8 enhancements based on role that we have here, so then I think
9 it might be best to go ahead and hear first from the agent. Of
10 course he'll remain here in case something comes up as we move
11 forward. So I'll hear from him first. I'll give defense
12 counsel an opportunity to ask questions, and in particular if
13 it's going to role of those (indiscernible) more towards I
14 think Mr. Murillo that had a role enhancement and --

15 **MR. LOPEZ:** Yes, your Honor, and I believe
16 Mr. Hernandez as well, your Honor.

17 **THE COURT:** And Mr. Hernandez. So in particular as
18 to those two, and then we'll come back and address the
19 objections themselves. Okay, so let's go ahead and hear from
20 the agent to begin with.

21 **MR. LOPEZ:** Your Honor, at this time the Government
22 will call Agent Vincent Rubbo.

23 **THE COURT:** You go ahead and take the witness stand,
24 please.

25 **MR. RUBBO:** Yes, ma'am.

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7

1 **THE COURT:** Before you are seated, however, please
2 raise your right hand to be sworn in.

3 **VINCENT PAUL RUBBO, GOVERNMENT'S WITNESS, SWORN**

4 **THE COURT:** Thank you, you may be seated.

5 **MR. LOPEZ:** Your Honor, and I know that we had this
6 set up previously to go ahead and play but I don't know if
7 anything needs to be switched to go ahead --

8 **THE COURT:** Ms. Belmares will handle that part of it.
9 I will say we have a new system so we're still sort of getting
10 the hang of it. Hopefully we don't have any problems here.
11 And I'm sorry, agent, give me your full name again, please.

12 **THE WITNESS:** Yes, it's Vincent Paul Rubbo.

13 **THE COURT:** Spell the last name for me, please.

14 **THE WITNESS:** R-U-B-B-O, "B" as in boy.

15 **THE COURT:** Thank you. What is it that we're showing
16 on the -- there you go, okay.

17 **MR. LOPEZ:** Yes, your Honor.

18 **DIRECT EXAMINATION**

19 **BY MR. LOPEZ:**

20 Q Agent Rubbo, can you please state your full name for
21 purposes of the record?

22 A Vincent Paul Rubbo.

23 Q And, Agent Rubbo, who are you currently employed by?

24 A Currently employed at the Bureau of Alcohol, Tobacco,
25 Firearms, and Explosives.

1 Q And what's your position within ATF?

2 A I'm a special agent with the ATF.

3 Q And how long have you been a special agent with ATF?

4 A I've been a special agent with ATF since January, 2015
5 (indiscernible)

6 Q Prior to --

7 A -- and a half years.

8 Q Prior to serving as a special agent for ATF, were you
9 involved in any other military or law enforcement positions?

10 A Yes, I was involved in corporate security positions,
11 security director positions, as well as an officer in the
12 United States Marine Corp.

13 Q Okay. As a special agent for ATF, were you involved in
14 investigation relating to Jesus Murillo and various other straw
15 purchasers?

16 A I was not directly involved in an investigation with
17 Murillo, but ATF agents, especially in ATF group three, Agent
18 Cesar Zambrano was, as well as another agent in our office,
19 Special Agent Dave Weiss (phonetic). There's two different
20 investigations with Murillo.

21 Q Did the -- and I'll get to that here in a bit. I'd like
22 to talk to you about how this case initiated or how these cases
23 initiated relating to Jesus Murillo. And if I could draw your
24 attention to a graphic that's in place here, using this graphic
25 can you explain to the Court how ATF's investigation or

1 investigations led to Jesus Murillo?

2 A Absolutely. I'll start with the -- basically in the top
3 left, you have --

4 **MR. BALLESTEROS:** Judge, --

5 **THE COURT:** Just a second.

6 **MR. BALLESTEROS:** If I may, Judge, may I have
7 Mr. Murillo either come sit with me or if I can go over there
8 and just be with my client in case --

9 **THE COURT:** Whichever is actually most convenient.
10 And if any other defense counsel wants their client next to
11 them, whichever is most convenient for you, I think it might be
12 easier to have the -- if you want -- have all your paperwork
13 there to have your client sitting next to you then --

14 **MR. BALLESTEROS:** I can go over there.

15 **THE COURT:** Okay.

16 **MR. BALLESTEROS:** I think it's a better view of --

17 **THE COURT:** Okay.

18 **MR. BALLESTEROS:** -- the presentation, if I may.

19 **MS. GUTIERREZ:** I'd like to (indiscernible)

20 **THE COURT:** Any -- yes, any one of defense counsel
21 can do that or bring their client to the table.

22 **MR. ROMERO:** May I have Mr. Hernandez (indiscernible)

23 **THE COURT:** Yes. Mr. Garcia, if you want, he can
24 pull around on your side or whatever works best for you because
25 I know it's hard to -- all -- or you can put that monitor on

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10

1 the other way around, sit next to him. Whatever --

2 **MR. GARCIA:** Okay.

3 **THE COURT:** Flip the one monitor towards you and
4 Mr. Romero can have the other monitor towards him.

5 **MR. ROMERO:** I'm fine, your Honor.

6 **THE COURT:** Okay, all right. Okay, I think we can
7 continue.

8 **BY MR. LOPEZ:**

9 Q So, Agent Rubbo, can you explain to the Court how ATF's
10 investigation or investigations led to Mr. Murillo?

11 A Yeah, so it's basically a culmination of three separate
12 ATF investigations. One investigation was with Carlos Zamudio,
13 this investigation include straw purchases and firearms
14 trafficking. As you can see in the hierarchy that Carlos
15 Zamudio was arrested by ATF for straw purchasing and
16 trafficking firearms into Mexico. He was purchasing firearms
17 not for himself but for another individual named Lizandro
18 Salvador Morales. ATF also had an investigation with a Jesus
19 Murillo, one of the codefendants here. This investigation
20 started out as a -- based on 18 USC 922(n) where Murillo was
21 under indictment for a separate crime while in possession of
22 firearms. And then there was my investigation which started
23 with a lot of multiple sales of long guns or AK47-type firearms
24 from several individuals here and several individuals who are
25 not on this presentation that purchased multiple AK47-type

1 firearms within a very short period -- short timeframe, which
2 led me to start an investigation into the straw purchasing of
3 these firearms, which makes -- mostly centered around Miguel
4 Cervantes, Rene Hernandez, Mario Garcia, and Felix Hernandez.

5 Q Now, at the inception of these three ATF cases, were ATF
6 agents aware of the link between the three cases at their
7 inception?

8 A Not at the beginning, but as we progressed through and
9 then started de-conflicting with each other, we were -- we did
10 become aware of who was associated with which individual and
11 who was buying presumably for several different individuals.

12 Q Okay. Now, you mentioned Mr. Zamudio, and I just want
13 this to be clear on the record, had purchased for an individual
14 with the last name Morales-Medrano. After Mr. Morales-Medrano
15 was arrested, did Mr. Zamudio continue buying for another
16 individual?

17 A Yes, it was -- he stated that he was buying -- after
18 Morales-Medrano, also known as "Chava," was arrested, he stated
19 he purchased firearms for another individual, basically his
20 brother.

21 Q And --

22 **THE COURT:** Who's brother, Morales's brother or --

23 **MR. LOPEZ:** Yes, your Honor.

24 **THE COURT:** Okay.

25 //

1 **BY MR. LOPEZ:**

2 Q And was that individual also an individual or were these
3 other individuals that Mr. Zamudio purchased for after the
4 arrest of Mr. Morales-Medrano also some of the individuals that
5 Mr. Murillo was purchasing for?

6 A Yes (indiscernible)

7 Q Now, agent, I want to draw your attention to various of
8 these individuals and their specific roles within this scheme.
9 And I'd like to go ahead and start off with Miguel Cervantes,
10 Junior. What can you tell the Court regarding Mr. Cervantes,
11 Junior and his role within this scheme?

12 A With Miguel Cervantes, we -- me and another agent first
13 approached Miguel Cervantes at the residence of the Hernandez
14 brothers. From there we conducted a couple different
15 interviews with Miguel in which he told ATF agents that he was
16 an avid marijuana smoker. He did come up with a story of how
17 he purchased kind of six firearms on one day and then came back
18 and purchased another two firearms the next day. There was
19 kind of a story where he said that these firearms were stolen,
20 that he lost these firearms, but Cervantes ended up basically
21 just coming clean with ATF agents, admitted that he did wrong
22 and he basically apologized for it, and telling us that he
23 bought these firearms, approximately eight firearms, seven of
24 which I was able to identify through ATF Form 4473's, for other
25 individuals, specifically for Jesus Murillo.

1 Q And --

2 THE COURT: Let me interrupt you just for a second
3 there. You said seven you could identify. As to the eighth,
4 were you able to get any other information other than him
5 saying he had purchased eight?

6 THE WITNESS: Your Honor, I checked several different
7 FFLs in the area, the Rio Grande Valley, and I was not able to
8 come up with that.

9 THE COURT: With the eighth.

10 THE WITNESS: No.

11 THE COURT: And did he ever give you any more
12 information about to where the eighth one was purchased?

13 THE WITNESS: He gave -- he did give me some
14 information of which FFLs that he went to, and from that
15 information and what I already had through multiple sales
16 reporting, through 4473s from FFLs, I was able to verify that
17 as to exactly which FFLs he was telling me he went to, which
18 was accurate, but I could not --

19 THE COURT: But you only identified seven.

20 THE WITNESS: There's -- yes, yes, your Honor.

21 THE COURT: Okay.

22 THE WITNESS: Either for whatever reason I could not
23 find it or that 4473 was not produced for the other firearm.

24 THE COURT: All right, thank you.

25 //

1 **BY MR. LOPEZ:**

2 Q And, Agent Rubbo, later on I'll talk to you a little bit
3 in more detail regarding these 4473's. But in relation to the
4 firearms purchased by Mr. Cervantes, did Mr. Cervantes indicate
5 to you whether he knew where these firearms were eventually
6 destined to go to?

7 A Yes, he stated that he knew because he was riding around
8 with Murillo and Rene Hernandez to go purchase these firearms.
9 On one of the occasions where he was picked up and transported
10 in Murillo's vehicle, Murillo stated to both him and Rene that
11 these vehicles were destined for Mexico.

12 **THE COURT:** The vehicles or the firearms?

13 **MR. LOPEZ:** The --

14 **THE WITNESS:** The firearms were destined.

15 **THE COURT:** Okay.

16 A These firearms were destined to Mexico and that they were
17 going to be scratched off -- the serial numbers would be
18 scratched off or obliterated so that they wouldn't have to
19 worry about races coming back.

20 Q And I'll talk to you more in detail regarding in generally
21 speaking what those obliterated serial numbers do for your
22 investigation later. But in relation to Mr. Cervantes's role
23 in this scheme, how much was he to be paid based on your
24 investigation for each firearm purchased?

25 A If I believe correctly, it was -- Miguel was paid

1 approximately \$150 per rifle.

2 Q Okay. After Miguel made his purchase -- or Mr. Cervantes
3 made his purchases, were you given any other information as to
4 any attempts by Mr. Cervantes to recruit other individuals to
5 also purchase firearms for this conspiracy?

6 A Yes. At the time, Miguel stated that another individual
7 not present was recruited and that recruitment came -- took
8 place at the mall. Miguel Cervantes was with another friend at
9 a mall where he was approached by Rene Hernandez. Rene
10 Hernandez ended up coming up with this scheme, telling him how
11 easy it is to purchase firearms, to make money off of it. And
12 while Miguel and his friend were at the mall, they listened to
13 Rene and unfortunately carried through and went through with
14 the purchase of the firearms.

15 In a separate kind of interview with Murillo, Murillo
16 stated that Cervantes, --

17 Q (Indiscernible)

18 A -- he did have four to five other friends that were
19 helping him out --

20 Q And --

21 A -- in that scheme.

22 Q And let's go ahead and pause here because we will get to
23 Murillo eventually. But how many of these rifles that were
24 purchased by Mr. Cervantes are we aware of that have been
25 recovered --

1 **THE COURT:** Let me interrupt you before you get to
2 that question so I can clarify something you just said. Did
3 Mr. Cervantes himself say that he had recruited four or five
4 others or --

5 **THE WITNESS:** No, he did not. This is --

6 **THE COURT:** -- what was the understanding of what --

7 **THE WITNESS:** Jesus Murillo stated that --

8 **THE COURT:** Was it Hernandez that approached -- oh,
9 okay.

10 **THE WITNESS:** Jesus Murillo stated that Cervantes
11 recruited four to five of his friends.

12 **THE COURT:** Okay, okay.

13 **BY MR. LOPEZ:**

14 Q But nonetheless, agent, did Mr. Cervantes at least admit
15 to recruiting an individual for purchases in this conspiracy?

16 A Yes, kind of conspired with another individual, Alexander
17 Cardenas, which led to the purchase of three additional
18 firearms.

19 Q Okay, and how many of the rifles that were purchased by
20 Mr. Cervantes have been recovered in Mexico that we are aware
21 of?

22 A To this date I am aware of four of those firearms that
23 have been recovered in Mexico, specifically Reynosa, Mexico.

24 Q And you mentioned firearms that you're aware of. Now, if
25 a firearm is recovered in Mexico and that firearm has an

1 obliterated or altered serial number, are you going to be made
2 aware of that firearm being recovered?

3 A No. At that point the law enforcement authorities in
4 Reynosa or Mexico would not have a serial number or identifier
5 to go off of to trace that back to a 4473 or to the original
6 purchaser.

7 Q And did Mr. Cervantes make any statements as to whether he
8 believed that these firearms, when exported, would have altered
9 or obliterated serial numbers?

10 A Yes, as I said before, while riding around with Jesus
11 Murillo, Murillo stated that these firearms would have their
12 serial numbers obliterated. Obviously not saying -- using the
13 word "obliterated," but saying that these -- the numbers would
14 be scratched off.

15 Q Okay. Now, if we can go ahead and move on to Marella
16 Sandoval who I believe is kind of the next step in your
17 investigation related to these straw purchasers, what can you
18 tell us about Ms. Sandoval?

19 A Yeah, at the same time while I was going through different
20 suspected straw purchasers at the time, other ATF agents came
21 across Marella Sandoval's purchasing three AK47-type rifles
22 during the -- ATF agents brought her into the office for a
23 noncustodial interview. At that point, Sandoval -- actually
24 she had two interviews. On the first interview, she didn't
25 basically tell us the complete truthful story of what happened.

1 She also had a fake bill of sale that was presented to ATF
2 agents for these firearms.

3 Q Can you explain to the Court what exactly is a bill of
4 sale or what was it that she presented?

5 A She basically presented a receipt that -- handwritten
6 receipt that would say that, hey, there was another buyer, that
7 she sold these firearms to another individual, which we found
8 out which was not true. Marella Sandoval ended up telling us
9 that Jesus Murillo and Pedro -- another individual named Pedro
10 Ruiz came up with a scheme or the idea to present a fake bill
11 of sale or even go through and file a false police report for
12 the stolen firearms. In the end, Murillo and Ruiz had
13 convinced her to provide a bill of sale to the ATF agents.

14 Q Okay. And I just want it to be clear here, after
15 Ms. Sandoval made the statements to ATF agents initially
16 regarding the fake bill of sale, did she voluntarily call ATF
17 to explain the true story?

18 A Yeah, after the incident, Ms. Sandoval called ATF agent
19 back, ATF Agent Wodesky (phonetic), and feeling bad about what
20 happened and not telling the truth. She offered to voluntarily
21 come back in and explain the truth to the agents.

22 Q Okay. And I know you mentioned an individual by the name
23 of Pedro Ruiz. I don't want to go into too much detail
24 regarding this, but have we -- have ATF agents been given --
25 during these courses of these interviews with these various

1 defendants, have they been given conflicting information
2 regarding the role and involvement of Mr. Pedro Ruiz?

3 A Yes. A couple of cooperators here ended up giving
4 conflicting statements as to who provided the money, who
5 traveled with Marella Sandoval, who received the firearms, and
6 how much they were paid for the firearms.

7 Q Okay. Nonetheless, one thing that has stayed true
8 regarding Ms. Sandoval's purchases is the involvement of
9 Mr. Murillo; is that correct?

10 A Yes. Throughout each interview and proffer, the same
11 story remains the same, that three AK-47's were purchased for
12 Murillo, cash was provided by Murillo to Sandoval at the time -
13 - before the time of purchase, knowing that these firearms were
14 going directly to Murillo after the purchase.

15 Q Moving on to Mr. Felix Hernandez, what can you tell us
16 about Mr. Felix Hernandez?

17 A Felix Hernandez is another basically individual that we
18 had on multiple sales. We had 15 firearms, 13 long guns, 13
19 AK-47 firearms, and two handguns that I was able to provide or
20 have the ATF Form 4473's for the purchase signed by Felix
21 Hernandez. Through statements of other cooperators and
22 individuals, we knew that Felix Hernandez was also involved
23 with these individuals in recruiting other individuals to
24 purchase firearms. It's believed that Roberto Laza (phonetic),
25 who's not a part of this presentation, was another one of those

1 individuals. We also know that Felix Hernandez, through
2 statements made by other cooperators and other statements made
3 under proffer, that Felix Hernandez was involved not only with
4 just purchasing firearms, but also with associating or making
5 the connection, introduction of Jesus Murillo with a -- with
6 Carlos Zamudio. So you have kind of one investigation linking
7 into -- with Jesus Murillo linking into Carlos Zamudio.

8 Q Okay.

9 A And that's where you have statements made where Felix
10 Hernandez had asked Carlos Zamudio to take a bag of
11 approximately 30 firearms to Jesus Murillo. Zamudio stated
12 that he did take a bag of approximately 30 firearms to Murillo.
13 Also, statements were made that --

14 **THE COURT:** I'm sorry, Zamudio took them to Murillo?

15 **THE WITNESS:** Yes, your Honor.

16 **THE COURT:** Okay.

17 A And from Zamudio's testimony, it was believed that these
18 firearms were going not to Lizandro Morales but his brother,
19 "Diablo," Luis (phonetic) Morales, who was identified as
20 Fanulanu (phonetic) on the slide.

21 Q Now, agent, I want one thing to be clear on the record
22 regarding this back of 30 firearms. Were we given any sort of
23 identifying features regarding the firearms in the bag such
24 that ATF would be able to trace them?

25 A No, no identifying features. We didn't have description

1 of what exactly firearms were in it, what any firearms with
2 serial numbers. The only information that was received was
3 that Miguel Cervantes provided -- or purchased five AK-47's for
4 Murillo, and five -- those five AK-47's were part of this
5 delivery.

6 Q Okay, so five of the guns that were purchased by
7 Mr. Cervantes were believed to be within this bag of 30
8 firearms.

9 A Yes.

10 Q Now, what can you tell us about the relationship between
11 Mr. Hernandez and Mr. Zamudio regarding a social or even do
12 they use drugs together based on information that you gathered?

13 A Yes. Statements made by cooperators that it was often
14 enough that Zamudio or Murillo were with -- typically with
15 Felix Hernandez, Rene Hernandez, and Miguel Cervantes as
16 smoking marijuana either at the residence of the Hernandez or
17 close by down the street to another individual named Alberto
18 Lanu (phonetic). There's also statements made that there was
19 also drug transactions taking place at the Hernandezes'
20 residence, specifically Rene and Felix selling marijuana out of
21 the house.

22 Q Okay. Now, going back to the firearms actually purchased
23 by Mr. Felix Hernandez, how many ATF Form 4473's with these
24 misrepresentations were found relating to Mr. Hernandez?

25 A For Felix Hernandez --

1 Q Felix Hernandez.

2 A Yes, Felix, there was 15, 13 AK47-type firearms, typical
3 firearms that associated with drug trafficking organizations,
4 cartels.

5 Q And this is one part that I do want to make clear to the
6 Court and to counsel, can we -- currently, is ATF able to
7 segregate which of those 15 firearms were destined to be
8 purchased for Zamudio and which of those 15 firearms were
9 destined to be purchased for Murillo?

10 A Unfortunately I cannot due to Carlos Zamudio, Jesus
11 Murillo, Mariano Garcia, Felix/Rene Hernandez, and Miguel --
12 actually not Miguel Cervantes, but those individuals were
13 driving around to separate different FFLs, either on the same
14 day or different days or day after, and purchasing kind of at
15 the same time. So it's kind of hard to tell exactly who's
16 firearms were going to either Zamudio or Murillo. But through
17 the investigation and through statements made, it's -- you can
18 -- for me it's kind of easy to tell that Zamudio and Murillo
19 were kind of working kind of as partners to recruit these
20 individuals and get them to other individuals --

21 Q Okay.

22 A -- kind of higher up the hierarchy.

23 Q And nonetheless, we do know that regardless of whether
24 it's 14 and one or one and 14 or whatever the combination is,
25 at least one of these firearms was purchased by Mr. Felix

1 Hernandez for Zamudio, and at least one of those was purchased
2 for Mr. Jesus Murillo specifically.

3 A Yes.

4 Q Moving on to Mr. Rene Hernandez, what did ATF agents learn
5 during the course of the investigation regarding Mr. Rene
6 Hernandez?

7 A ATF learned that Rene Hernandez had a significant role in
8 recruiting Miguel Cervantes. Those two being close friends and
9 with all of them kind of living in the neighborhood, it's kind
10 of easy to see each other or even bump into each other at the
11 mall or somewhere else --

12 Q And you mentioned all of these -- and I apologize for --

13 A That's okay.

14 Q -- cutting you off. You mentioned all these individuals
15 living close in the neighborhood, I realized I didn't speak
16 about it earlier. Is there a familial relationship between
17 Mr. Rene Hernandez and Mr. Felix Hernandez?

18 A Yes, there is because I believe they share the -- went to
19 the same school, kind of grew up in the same neighborhood --

20 **THE COURT:** I'm sorry, Felix and Rene Hernandez.

21 **MR. LOPEZ:** Yes.

22 **THE WITNESS:** Yes. And that these -- the brothers --

23 **THE COURT:** They're brothers, okay.

24 **MR. LOPEZ:** Yes, and that's what I was getting at.

25 A They're brothers. And then, you know, at the very start

1 of my investigation, there was a link through social media
2 through all these individuals as being friends with each other,
3 associated with each other, posting on their timelines and, you
4 know, going to Nikki Rowe High School together. So you could
5 kind of (indiscernible) --

6 Q Did a lot of these --

7 A -- them together as going -- the same group here is going
8 out and purchasing one, two, three, or four firearms at a time.

9 Q With the exception of Ms. Sandoval, were a lot of these
10 individuals even living in the same neighborhood roughly?

11 A Yes, they were.

12 Q Now, what can you tell us about the firearm purchases made
13 by Mr. Hernandez?

14 A Rene Hernandez purchased eight firearms with corresponding
15 ATF 4473's for these firearms. We know that these firearms
16 were going to Jesus Murillo because Miguel Cervantes was with
17 Rene Hernandez and Murillo. In fact, Murillo would meet
18 Cervantes on the corner of the street, pick him up. Rene
19 Hernandez would already be there with them, and these three
20 individuals would go to the FFLs --

21 **THE COURT:** So you're saying the ones purchased by
22 Rene Hernandez were going to Murillo and not Zamarillo (sic)?

23 **THE WITNESS:** They -- all of Miguel Cervantes's
24 firearms were going to Jesus Murillo and --

25 **THE COURT:** Okay, what about Rene Hernandez.

1 **THE WITNESS:** And Rene Hernandez being with
2 Cervantes, we knew that those two, that it was Rene and
3 Cervantes together purchasing firearms for Murillo.

4 **THE COURT:** For Murillo.

5 **THE WITNESS:** Yeah.

6 So basically it was Rene Hernandez who would
7 coordinate with Miguel Cervantes, have him picked up around the
8 corner, go with Murillo; Murillo would take both individuals to
9 the FFLs to purchase AK-47's for him.

10 **BY MR. LOPEZ:**

11 Q And when -- and just so the record is clear, when you say
12 "FFL," you're talking about Federal Firearms Licensees,
13 correct?

14 A That's correct.

15 Q And when these individuals are being taken to the FFLs,
16 during the course of your investigation and looking at receipts
17 for sales and purchases, were you able to find sales and
18 purchases made at or near the same time between the group that
19 was traveling with Murillo, specifically Murillo, Rene, and
20 Miguel, and also Felix and/or Mariano?

21 A Yes, you could tell. Going through the ATF 4473's, the
22 date that they were purchased, and even if they had a timestamp
23 or if they had a NICs (phonetic) kind of background check on
24 it, you could see that they -- these purchases were made within
25 a very close timeframe, if not the same time, with all these

1 individuals involved. And that's including Mariano Garcia,
2 Felix Hernandez, Rene Hernandez, and Miguel Cervantes.

3 Q So in other words, even though in one vehicle you had
4 Mr. Murillo, Mr. Hernandez, and Mr. Cervantes, based on looking
5 at the receipts and the transactions, a lot of times you would
6 see either Mr. Mariano Garcia or Felix Hernandez purchasing
7 firearms from the same FFL on the same date, sometimes even
8 within minutes of each other.

9 A That is correct.

10 Q Okay. Now, I don't want to get into too much of the
11 details, but after an arrest warrant was secured for
12 Mr. Hernandez, were agents able to locate Mr. Hernandez in the
13 Valley?

14 A No, we were not. We attempted to execute arrest warrant
15 at the known, suspected residence of Rene and Felix Hernandez
16 off of Kendlewood Avenue here in McAllen. They were not
17 present at the time. After that, --

18 Q Did --

19 A -- I later ascertained that they --

20 Q Did -- before going into that, did you receive any
21 cooperation at the residence regarding the location of Mr. Rene
22 Hernandez and Mr. Felix Hernandez?

23 A We spoke with -- I personally spoke with the mother of
24 Felix and Rene Hernandez who gave no cooperation as to their
25 whereabouts, cellphone number, what they were doing, and who

1 they were with.

2 Q Okay, so how did it ultimately come to be that agents
3 found Mr. Rene Hernandez?

4 A Ultimately ascertained that Rene and Felix Hernandez were
5 working in Corpus Christi. I contacted an ATF agent in Corpus
6 Christi to -- for -- to look out for both Rene and Felix
7 Hernandez.

8 Q At the time you contacted Corpus Christi, were you given
9 any information regarding other law enforcement agencies also
10 on the lookout for Mr. Rene Hernandez?

11 A Yeah, when I spoke with the ATF Agent Juanito Hernandez
12 (phonetic), he spoke with Corpus Christi Police Department. He
13 gave the information for both Rene and Felix Hernandez. Corpus
14 Christi Police Department was very familiar with Rene
15 Hernandez. They said they were familiar with him because they
16 were under a investigation for indecent exposure with several
17 females within the Corpus Christi area, even within the
18 neighborhood of an ATF agent. These individuals identified
19 Rene Hernandez through these victims or the female statements
20 made, physical characteristics, as well as a license plate of
21 the vehicle he was driving.

22 Q So based on the information that Corpus Christi PD had as
23 pertinent to their investigation, were ATF agents able to
24 subsequently find Mr. Rene Hernandez?

25 A Yes, based on that information in identifying, knowing

1 exactly who Rene Hernandez was and what he was suspected of,
2 they were able to identify him at a residence and which was
3 believed to be a family member of both Rene and Felix
4 Hernandez.

5 Q Okay. Now moving on to the last defendant that's
6 scheduled for sentencing here today, Mr. Jesus Murillo, what
7 can you tell us about Mr. Jesus Murillo?

8 A Jesus Murillo was initially under ATF investigation for
9 being in possession of firearms while under indictment.
10 Mr. Murillo was under indictment for a separate nonrelated drug
11 trafficking offense which included trafficking approximately 55
12 kilos of cocaine in north -- well, north of here. I think it
13 was like Fort Bend, Texas. ATF agents started investigating
14 him for a vehicle accident which Murillo had four firearms
15 present in his vehicle. ATF agents then followed up with
16 interviews with Murillo and also interviews with a FFL owner
17 who stated that Murillo and Pedro Ruiz attended a concealed
18 handgun carry license class at his place of business where
19 Murillo had rented a firearm there.

20 Q At that point in time of the accident and the CHL class
21 that was being taken by Mr. Murillo, was he then already under
22 felony indictment out of Fort Bend County for the 55 kilograms
23 of cocaine?

24 A Yes, he was.

25 Q Okay. What else was learned about Mr. Murillo's role

1 within this hierarchy organization?

2 A Right about the same time that I was interviewing with
3 Cervantes, ATF agents were also interviewing with Sandoval.
4 Sandoval positively identified Murillo as the individual that
5 these firearms were being trafficked to, as well as Cervantes
6 identified Murillo as the same individual that he had -- he and
7 Rene had purchased firearms for. With that information we were
8 able to ascertain that our investigations were linked between
9 Murillo acquiring these firearms and those firearms that were
10 found in his vehicle. In a -- I believe it was a noncustodial
11 interview with Murillo, he stated that he received these
12 firearms from a gun show and gave agents specific amounts how
13 much he paid for these firearms, knowing that he was under
14 indictment, basically telling us that he was possessing
15 firearms or went to this CHL class to rent a firearm as well.

16 Q The firearms that were found in the vehicle that had the
17 accident involving Murillo, what kind of firearms generally
18 speaking are they?

19 A These -- there's basically two AK47-type rifles, typical
20 your AK-47 rifles that are smuggled or exported into Mexico for
21 drug trafficking organizations. Also a .38 super and .380
22 caliber pistol.

23 Q Are these -- are the weapons that were found in the
24 vehicle that Mr. Murillo had the accident in consistent with
25 the type of weapons that you see in your experience as the type

1 of weapons that are exported into Mexico illegally?

2 A Every day.

3 **THE COURT:** And when was that accident?

4 **THE WITNESS:** Your -- I don't have the date.

5 **MR. LOPEZ:** Your Honor, it's the date that's on Count
6 One of the indictment.

7 **THE COURT:** Okay.

8 **BY MR. LOPEZ:**

9 Q And before this -- or I guess let me backtrack here. As
10 the investigations begin -- you begin to see the connections
11 between the investigations, both from the initial 922
12 investigation of Mr. Murillo for being a person in possession
13 of firearms while under indictment and your investigation of
14 these underlying straw purchasers, what begins -- what do you
15 begin to see is Mr. Murillo's role in the conspiracy?

16 A We start to see that Murillo had a major role in
17 recruiting individuals, offered them or enticing them with
18 either a hundred and fifty to \$300 per firearm to purchase
19 firearms for him. Based on statements made by cooperators that
20 Murillo was working not only for himself to traffic firearms
21 into Mexico, but kind of working in tandem with the straw
22 purchasers and Carlos Zamudio to make sure that they were
23 getting paid their money to have these firearms trafficked into
24 Mexico in which they were getting anywhere around \$1,500 per
25 rifle that they acquired from these individuals.

1 Q So, all right, let me backtrack. Are you aware of an
2 incident involving Mr. Murillo back in 2012 regarding alleged -
3 - an allegedly stolen vehicle?

4 A Yes. During a noncustodial interview of Murillo, I became
5 aware of Murillo being under investigation, an ATF
6 investigation, for straw purchasing. In that interview, he
7 stated that he had made a written affidavit for the purchase.
8 He purchased nine firearms knowing that they were going to
9 Mexico for another individual. Again, and then he admitted
10 that in the interview which was consistent with the statements
11 he made during that ATF investigation in 2012.

12 Q Okay. Nonetheless, the firearms that were purchased back
13 in 2012 and as during the course of your investigation, were
14 you given any sort of indication during your investigation into
15 Murillo that he knew where these firearms were headed?

16 A Yes. When we arrested Murillo, I can't tell which date it
17 was, but he had -- 2012 he had written affidavit where he
18 purchased nine firearms. And then we have a vehicle
19 accident --

20 **THE COURT:** Let me interrupt you there for just a
21 second.

22 **THE WITNESS:** Yes, your Honor.

23 **THE COURT:** That 2009 affidavit, that was in
24 connection with a charge that he was convicted of a false
25 report. Is that --

1 **THE WITNESS:** Yes, that is correct.

2 **THE COURT:** -- in connection with that? Okay.

3 **THE WITNESS:** With I believe it was Mission PD, --

4 **THE COURT:** Okay.

5 **THE WITNESS:** -- a false report, false stolen vehicle
6 report.

7 **THE COURT:** And as to those firearms, did you ever go
8 back and confirm the purchase of those firearms?

9 **THE WITNESS:** I did not personally but --

10 **THE COURT:** Did ATF?

11 **THE WITNESS:** ATF did looking through the
12 investigation and knowing Zambrano, those firearms would have
13 corresponding 4473's and they had the serial numbers on them.
14 But I cannot confirm that they were, your Honor.

15 **THE COURT:** Okay, but he admitted to having purchased
16 them.

17 **THE WITNESS:** Yes.

18 **THE COURT:** Okay.

19 **THE WITNESS:** Yes, on several different occasions.

20 **THE COURT:** Okay.

21 A So you have kind of this history of Murillo either
22 purchasing firearms for other individuals or possessing
23 firearms. And you had the charges in Fort Bend where he was
24 under indictment after the -- under -- after he was under
25 indictment. He had the vehicle accident where four firearms

1 were recovered, those two kind of AK47-type firearms and two
2 highly -- also highly trafficked pistols, a .38 super and .380
3 were in his possession.

4 Q After the accident, does he continue to work with others
5 and recruit others to conduct straw purchasing activities?

6 A Yes, he does.

7 Q After recruiting others to conduct straw purchasing
8 activities and his subsequent warrant issued for his arrest, at
9 the time of his arrest is he still again found in possession of
10 firearms?

11 A Yeah, when we finally got the arrest warrant for Murillo
12 in 2006 (indiscernible) November, 2016, ATF agents pulled
13 Murillo over in his vehicle, also found another -- a nine
14 millimeter STAR-manufactured firearm loaded with five rounds in
15 the center console this firearm. And in a post-*Miranda*
16 custodial interview, he admitted that he had this firearm for
17 protection.

18 Q Now, Agent Rubbo, I want to draw your attention to I guess
19 the fifth bullet point up here on the screen, the document and
20 involvement with the purchase of at least 27 firearms, and
21 bring your attention to the next screen. In regards to Felix
22 Hernandez and Mariano Eberth Garcia, those two individuals were
23 purchasing both for Mr. Zamudio and Mr. Murillo; is that
24 correct?

25 A That is correct, because based on statements we have is

1 that at times they would go out individually for Murillo or in
2 pairs, and then at times these individuals, Mariano, Miguel,
3 Rene, and Felix, would be out with Zamudio and Murillo
4 purchasing firearms for those two.

5 Q And as to Felix Hernandez, we don't know how many he
6 purchased for Zamudio, we don't know how many he purchased for
7 Murillo; is that correct?

8 A No, we don't because typically all you know is you go to a
9 gun shop and you purchase a gun and it's what gun did you
10 purchase, I purchased an AK.

11 Q And as to Mariano, we don't know how many of those guns
12 were purchased for Zamudio. We know some of the guns that were
13 purchased for Murillo in light of the timestamps on some of
14 these receipts, though; is that correct?

15 A That's correct.

16 Q We know that at least three of the guns that were
17 purchased by Mariano resulted in the transfer to Murillo; is
18 that correct?

19 A That's correct.

20 Q However, as to the remaining six, we don't know whether
21 those resulted in the transfer to Zamudio or to --

22 A I do not know.

23 Q Okay. Now, up here for instance under Rene Hernandez, I
24 have, you know, eight slash seven. Did Rene Hernandez purchase
25 eight firearms in connection with this conspiracy?

1 A Yes, he did.

2 Q And the other seven would be representative of those that
3 were purchased by Miguel, correct?

4 A Miguel.

5 Q So --

6 A With Miguel Cervantes, also based on statements of him
7 being in the vehicle, knowing that these firearms were going to
8 be scratched off and go to Mexico.

9 Q And what's not on this chart, I want to be clear, is there
10 were additional purchases that were also made by a Mr. Lesa
11 (phonetic) and Mr. Cardenas; is that correct?

12 A Yes, there's two other individuals that I had a kind of
13 social media link basically through Facebook and through
14 statements made that these guys were friends or knew each other
15 that had also purchased three firearms per each individual.
16 Alex Cardenas, he's not here and I don't want to get in too
17 much into it, but he retained an attorney and no statements
18 were made. And basically the same thing with Leza.

19 Q Okay. And generally speaking, this is the organizational
20 structure of this organization as this investigation has
21 determined it to be; is that correct?

22 A Yes.

23 **MR. LOPEZ:** Okay, your Honor, I have no further
24 questions for this witness.

25 **THE COURT:** Okay, why don't we take it in the order

1 in which the testimony was presented as to these Defendants,
2 beginning with Mr. Cervantes?

3 **MR. GARCIA:** Okay, may I proceed, your Honor?

4 **THE COURT:** You may.

5 **CROSS EXAMINATION**

6 **BY MR. GARCIA:**

7 Q Mr. Rubio (sic), how many weapons is Mr. Cervantes being
8 held accountable for?

9 A Eight.

10 Q Eight. On the slide that was just removed, it said seven.

11 A I think it had PSI, I think they reported that he had
12 eight based off of his statements, but what I know it's seven.

13 Q And you have documentation for seven.

14 A Documentation for seven. So to answer your question, he's
15 accountable for seven firearms.

16 Q Account for seven.

17 A Yes.

18 Q Okay, seven purchases?

19 A Seven firearms, two different purchases, two different
20 dates of (indiscernible)

21 Q Would you agree that possibly his recollection on how many
22 firearms he purchased was incorrect?

23 A That's possible.

24 Q And I believe there was a -- some statements that you made
25 about the -- you recovered four firearms; where did you recover

1 these firearms?

2 A I believe those four firearms may have been with Murillo.
3 These four firearms were recovered in a McAllen PD
4 investigation involving the accident of Murillo. And this --
5 these are separate, none of these guns were Cervantes's guns.
6 It's a totally separate incident where Murillo purchased
7 firearms which he stated that it was coming from a gun show
8 that he had purchased so --

9 THE COURT: But I think maybe the question was about
10 that they were recovered in Mexico. Is that --

11 THE WITNESS: Okay.

12 THE COURT: Mr. Garcia?

13 MR. GARCIA: I was talking to my client when he
14 testified --

15 THE WITNESS: Okay.

16 MR. GARCIA: -- to that, your Honor, I didn't hear
17 what he -- where they were recovered.

18 A Yes, so from all the traces, and ATF filled out traces for
19 every firearm, four of those traces, four firearms were traced
20 back in some kind of a crime-related incident in Mexico.

21 Q And those were the ones that he, Mr. Cervantes, had
22 purchased.

23 A Yes.

24 Q And were the serial numbers still on these firearms?

25 A These serial numbers still were, yes.

1 Q They were still there.

2 A And I don't mean to lead on or anything, even though that
3 they might not have been recovered yet doesn't mean that
4 they're -- they were scratched off or obliterated here. Maybe
5 they are somewhere else or maybe in Mexico, maybe somewhere,
6 but they have not been recovered and reported through ATF or
7 through some kind of tracing system to us.

8 Q I believe you testified that you believe that
9 Mr. Cervantes had recruited Alex Cardenas.

10 A Yes, I did.

11 Q And it -- but isn't it true that when Mr. Cervantes was
12 recruited, it occurred there at the mall with Mr. Cardenas
13 being there present as well?

14 A Yes, it did.

15 Q And that's where Mr. Rene Hernandez recruited both
16 Mr. Cervantes and Cardenas.

17 A Yes, I believe that Rene Hernandez had -- was the main
18 individual who introduced the idea to these two individuals,
19 and it was Rene Hernandez that sold both Miguel and Alexander
20 Cardenas on this idea.

21 Q And prior to this -- the purchase of these firearms,
22 Mr. Hernandez did know Mr. Cardenas and Mr. Cervantes as well.

23 A Yes.

24 Q Meaning that if he wanted to recruit Mr. Cardenas, he
25 didn't need to go through Mr. Cervantes; is that correct?

1 A I believe so.

2 Q They were all from the same neighborhood.

3 A Yeah, I believe so.

4 **MR. GARCIA:** I have no further questions, your Honor.

5 **THE COURT:** All right, thank you. We'll move to
6 Ms. Sandoval then.

7 **MS. GUTIERREZ:** Good morning, Mr. Rubbo.

8 **THE WITNESS:** Good morning.

9 **CROSS EXAMINATION**

10 **BY MS. GUTIERREZ:**

11 Q I want to ask you some questions with respect to the
12 background checks that these FFLs perform in order to determine
13 whether an individual -- or they can sell a firearm to an
14 individual. Is that what we -- is commonly known as a
15 background check?

16 A Yes.

17 Q Okay, and is that a Federal system or a State system?

18 A That is a Federal system managed by the FBI.

19 Q And what is the purpose of a background check, what is the
20 objective?

21 A The objective is to make sure that prohibited individuals,
22 prohibited individuals from purchasing firearms are not allowed
23 to purchase those firearms.

24 Q So in the event of some individual who has a felony
25 conviction who may not be able to purchase a firearm, is that

1 background check supposed to catch that and prevent the sale of
2 a firearm to that individual?

3 A I'm sorry, I didn't catch that.

4 Q If there is an individual who has a felony conviction and
5 they try to purchase a firearm, is the background check
6 supposed to catch that and prevent the same from occurring?

7 A Absolutely.

8 Q Do you have any information that Marella Sandoval was --
9 that it was unlawful for her to have purchased the firearms she
10 purchased?

11 A No.

12 Q Are you familiar with the term "deferred adjudication?"

13 A Yes.

14 Q And is it your understanding that deferred adjudication
15 prevents an individual from receiving a conviction for their
16 offense if they complete whatever terms they're given?

17 A Yes, that's --

18 Q And so if a person successfully completes their term of
19 probation and they end up with no conviction at the end, would
20 that prevent them from purchasing the firearm?

21 A No, it would not.

22 **(Pause)**

23 Q You don't have any information that Ms. Sandoval recruited
24 anyone else; is that correct?

25 A No, not at all. She was actually -- she was the one being

1 recruited.

2 Q And you made a statement with respect to the fact that you
3 believe there is no information to indicate that Marella
4 Sandoval had knowledge or reason to believe that the firearms
5 were destined for Mexico; is that an accurate statement?

6 A I can't recall if she knew or she did not know, but she
7 knew that Ruiz and Murillo were not allowed to purchase
8 firearms.

9 Q Is that --

10 **THE COURT:** And what is your understanding of how she
11 knew that?

12 **THE WITNESS:** Through -- she met with -- around the
13 time of the purchase of the three AK-47's, she had met with
14 Ruiz and Murillo. Ruiz told her that he had already purchased
15 a -- Ruiz was not a prohibited person, but from my
16 understanding of the conversation with Marella was that Ruiz
17 stated to her that he already purchased some firearms and if he
18 would purchase some more, it'd kind of be suspicious. She also
19 stated that Ruiz presented her an opportunity to make money. I
20 know Marella was kind of having a down -- a hard time, and her
21 sister had some issues and she had some kind of monetary --
22 some issues so Ruiz presented her as an individual to purchase
23 for Murillo so that she could make some money. And she knew
24 that Murillo kind of was involved in narcotics and that she
25 would be purchasing for him because Murillo could not purchase

1 those firearms.

2 **BY MS. GUTIERREZ:**

3 Q Well, you made several statements. The first one that is
4 interesting to me is that you stated that she knew that
5 Mr. Ruiz, Pedro Ruiz, was not allowed to purchase firearms.
6 That's not accurate; is that correct?

7 A That's correct.

8 Q Okay, so the only issue with Ruiz was that he had already
9 purchased several firearms and he did not want to look
10 suspicious; is that correct?

11 A That's correct.

12 Q That in and of itself does not prevent him from purchasing
13 more firearms, correct?

14 A Absolutely not.

15 Q And with respect to Murillo, how is it that Ms. Sandoval
16 knew that Murillo could not purchase firearms?

17 A There's a history with Ruiz and Murillo, and I believe
18 that Marella knew that he was under indictment and that he
19 couldn't purchase any firearms.

20 Q How do you have information or how did you get information
21 that Ms. Sandoval knew that Murillo was under indictment?

22 A Through conversations with Murillo, said that he told
23 Sandoval that he couldn't purchase any firearms.

24 Q Is that in any written report that you've prepared?

25 A It may be in the proffers or debriefs and the ROIs that I

1 have.

2 Q With respect to the question I initially asked you, you do
3 not have any information that tells you that Ms. Sandoval knew
4 that the firearms were destined for Mexico; is that correct?

5 A That's correct.

6 MS. GUTIERREZ: I have no further questions.

7 THE COURT: All right, thank you. Then let's move to
8 Felix Hernandez.

9 MR. GARZA: May it please the Court, Judge?

10 THE COURT: I'm sorry?

11 MR. GARZA: May it please the Court?

12 THE COURT: Yes, of course.

13 CROSS EXAMINATION

14 BY MR. GARZA:

15 Q Special Agent Rubbo, how is it that you were able to
16 determine or find out how Felix Hernandez was recruited, or do
17 you know who recruited him?

18 A I know that Carlos Zamudio had made statements that he was
19 with Felix Hernandez, Rene Hernandez, and Garcia at the time of
20 firearms purchases; which firearms purchases I cannot recall
21 offhand.

22 Q Okay, so you don't know today who actually recruited
23 Felix.

24 A I can't say positively exactly who was recruiting him or
25 if he worked more for one than -- more for Zamudio or for

1 Murillo.

2 Q You made a statement earlier about Zamudio and Murillo,
3 that they had -- that Felix had purchased weapons for both
4 individuals. How is it that you came about that information?

5 A Statements made by Zamudio under -- stating that he was
6 with him at the time of purchase, that he knew that Rene and
7 Felix Hernandez were not -- and Garcia not only purchased
8 firearms while he was present and these firearms were going to
9 him, but also that he had statements from these individuals
10 saying that they were getting paid \$300 from Murillo to
11 purchase firearms for him as well.

12 Q So Zamudio was saying that Murillo was paying them.

13 A Yes.

14 Q Did Zamudio ever say that he paid Felix?

15 A Not that I recall.

16 Q Initially when you started interviewing these individuals,
17 did you get a chance to interview Murillo also?

18 A Yes, we did.

19 Q Okay. And initially when you started interviewing those
20 individuals, they kept going back and making a fake -- like one
21 of the instances, they made a fake statement to you all in
22 terms of a purchase; isn't that correct?

23 A That is correct.

24 Q Okay, initially when you were talking with these
25 individuals, you felt uncomfortable about their trustworthiness

1 or they were being candid with you; am I correct?

2 **MR. LOPEZ:** Your Honor, if the record can be clear as
3 to who are these individuals in question?

4 **MR. GARZA:** Your Honor, I'll clear it up.

5 **THE COURT:** Okay.

6 **BY MR. GARZA:**

7 Q We're talking about Zamudio. Initially you felt
8 uncomfortable with -- because of the fake statements and the
9 statements they were making to you all; isn't that correct?

10 A Well, that's -- that was Zamudio, but basically with
11 everybody involved. It was kind of difficult to tell who was
12 purchasing for who through the investigation because very --
13 they had come forth with very limited information, or they
14 didn't know who exactly they were purchasing for, how many
15 firearms they purchased, or when they purchased them, or where
16 they purchased them at.

17 Q But you were -- you did get some documentation from these
18 two individuals --

19 **THE COURT:** Which two individuals?

20 Q -- where they had made some fake statements.

21 **THE COURT:** Which two individuals?

22 **MR. GARZA:** I'm sorry, from Zamudio and from Murillo.

23 A From -- there were inconsistent statements with Murillo.
24 I don't recall anything with Zamudio.

25 Q Did Zamudio ever tell you that Felix purchased firearms

1 for him?

2 A No, I didn't.

3 Q Okay. Did Murillo tell you that he purchased firearms
4 from him?

5 A Murillo stated that he didn't specifically state Felix
6 Hernandez by name, but he identified him through photo lineups
7 as individuals that he knew purchased. He -- basically Murillo
8 deflected and associated these individuals as friends of Miguel
9 Cervantes. And through that association, him stating that
10 there was these individuals, ID'ing them as individuals
11 purchasing firearms, that's how we knew they were purchasing
12 for Murillo.

13 Q You testified earlier that the Hernandez brothers, and I'm
14 talking about Felix and Rene, they lived in the Kendlewood area
15 here close by. Do you know if Murillo and Zamudio also lived
16 in that area?

17 A Yes, they lived close by. We're talking -- I don't know
18 the exact address but you're I think talking within a couple
19 miles, maybe a mile.

20 Q That they lived in the area.

21 A Yeah.

22 Q Okay. A mile could be not within the same neighborhood,
23 would I -- would you agree with me?

24 A Yes, I agree with you on it.

25 Q Did they live on Kendlewood also?

1 A No, they did not; different streets.

2 Q You testified earlier that Felix knew that these weapons
3 were going to Mexico because he would hang around and ride
4 around with these individuals. Did somebody tell you this or
5 did you basically assume that just because of the fact they
6 were -- and I'm talking about Zamudio and Murillo, did they
7 tell you that --

8 A I believe it was Zamudio that stated that they all knew --
9 and "they" being Mariano Garcia, Felix and Rene Hernandez knew
10 -- that these firearms were going to Mexico. They were told
11 that they were going north -- going up north, they were taking
12 these firearms up north. But then you also have statements
13 made by Zamudio saying that these individuals knew that -- you
14 know, they were -- they knew what they were getting into. And
15 then also you have Murillo stating that these firearms were
16 destined to Mexico and the numbers would be scratched off. And
17 he stated that to -- based on statements that were given to me,
18 that Rene and Miguel Cervantes were present at that time when
19 Murillo stated that.

20 Q But isn't it correct they initially told them that those
21 weapons were going north; isn't that correct?

22 A That is correct.

23 Q Okay, and thereafter he changed his statement and he said,
24 no, that they knew they were going to be going to Mexico; isn't
25 that correct?

1 A Yes.

2 MR. GARZA: I'll pass the witness, Judge.

3 THE COURT: Okay, we'll move then to Mr. Rene
4 Hernandez.

5 MR. ROMERO: May I proceed, your Honor?

6 THE COURT: You may.

7 CROSS EXAMINATION

8 BY MR. ROMERO:

9 Q Agent, is it true that Zamudio and Murillo were the
10 ringleaders of this conspiracy?

11 A Yeah, that's accurate to say, yes.

12 Q And were they ultimately responsible for paying all the
13 individuals that were below the chain here?

14 A Yes, they were.

15 MR. ROMERO: Could I -- your Honor, may I --

16 THE COURT: The chart?

17 MR. ROMERO: May I trouble the --

18 THE COURT: The chart back up?

19 MR. ROMERO: -- AUSA to put up the first PowerPoint,
20 the organizational PowerPoint?

21 MR. LOPEZ: This one?

22 THE COURT: Yeah.

23 MR. ROMERO: Yes, please and thank you.

24 MR. LOPEZ: Okay.

25 //

1 **BY MR. ROMERO:**

2 Q So really and truly we have Mr. Zamudio and Mr. Murillo as
3 being the two top heads here, right?

4 A Yes, sir.

5 Q Now, under Rene Hernandez, you have eight slash seven
6 equals 15, right? But you also stated during your testimony,
7 and correct me if I'm wrong, that Mr. Cervantes and
8 Mr. Hernandez would go often together and purchase these
9 weapons, and that these weapons would then end up with
10 Mr. Murillo.

11 **THE COURT:** And just to clarify, we have two
12 Mr. Hernandezes so Mr. Cervantes and which Mr. Hernandez?

13 **MR. ROMERO:** Rene Hernandez.

14 **THE COURT:** All right.

15 **BY MR. ROMERO:**

16 Q Do you see that?

17 A Yes.

18 Q Okay, so really and truly what we have here is a situation
19 where Rene Hernandez purchased eight weapons, not 15.

20 A Yeah, Rene Hernandez only purchased eight.

21 Q Okay. But it looks like he purchased 15 if we see that
22 equal sign, right?

23 A Yes, and I believe that was put there, the seven, because
24 he had the role in recruiting Miguel Cervantes.

25 Q Well, and I was going to ask you about that because you

1 used the term "introduced," right? And ultimately Mr. Murillo
2 was the person who selected the straw purchasers, wasn't he?

3 A I wouldn't necessarily say that he selected them. Anybody
4 that was associated or buying firearms for him could present
5 other individuals to buy --

6 Q Okay, did Mr. Hernandez make any money by introducing
7 Mr. Cervantes to Mr. Murillo?

8 A No, not that I know of.

9 Q Was Mr. Hernandez paid on the gross amount of weapons that
10 were purchased or was he only paid on the weapons that he
11 purchased?

12 A He was not paid anything. Just to be clear, Murillo was
13 the one who Cervantes stated that Murillo was the one handling
14 the money. He would always be the one handling the money,
15 paying Cervantes and Rene the cash before. So from statements
16 made, Rene Hernandez did not give anybody money to purchase
17 firearms for him or for Murillo or for anybody else.

18 Q And you mentioned that the initial meeting took place in
19 the mall.

20 A Yeah, with -- the initial meeting was with Miguel
21 Cervantes and his friend who ended up bumping into Rene
22 Hernandez at the mall.

23 Q How old is Mr. Cervantes, do you know?

24 A I believe he was born in '95, about 22.

25 Q That's now. But at the time of this meeting he was

1 younger than that, right?

2 A Yes.

3 Q How about Mr. Hernandez, Rene Hernandez, how old is he?

4 A About the same age.

5 Q Okay, so they were all friends from the neighborhood.

6 A Absolutely.

7 Q And they bumped into each other at the mall.

8 A Yes.

9 Q Was Mr. Murillo there?

10 A No, he was not.

11 Q Who was responsible for exporting the weapons to Mexico?

12 A Jesus Murillo and Carlos Zamudio were the main individuals
13 responsible for seeing that they were transported to Mexico.

14 Q How did -- how were the weapons exported to Mexico?

15 A I do not know exactly how they were. We have statements
16 made by Murillo of individuals stashing firearms in a Tahoe, an
17 individual that he was dealing with kind of that he was
18 purchasing for or working with.

19 Q Do you know of any involvement by Rene Hernandez in the
20 exporting of these weapons?

21 A No

22 Q Do you know if Mr. Rene Hernandez knows how they were
23 exported?

24 A No.

25 Q Do you know -- let's -- let me ask you this. The four

1 weapons that you say were recovered in Mexico, which four
2 weapons were they?

3 A If you have the Excel spreadsheet, I don't know if you
4 have that, privy to it or not, but it is -- I have a
5 spreadsheet that was part of the investigation that was made
6 and I could tell you --

7 Q Okay.

8 A -- from that.

9 **THE COURT:** I can tell you on the PSR what page it
10 is.

11 **BY MR. ROMERO:**

12 Q Well, let me ask you this, agent, and we can short-circuit
13 this line of questioning. With regards to the four weapons,
14 you said that they have never actually been recovered, have
15 they? They're not here in the United States.

16 A I do not know where they're at right now.

17 Q Okay. How do we know that the four weapons that were
18 allegedly recovered in Mexico was -- were four weapons that
19 were purchased by Rene Hernandez?

20 A Let me backtrack and let's see here. If I'm correct, Rene
21 Hernandez had four firearms traced.

22 Q I'm asking you the questions.

23 A Okay, --

24 Q Is it possible --

25 A -- I don't believe Rene Hernandez had any firearms traced.

1 **THE COURT:** I will tell you the -- according to the -
2 - oh, I'm sorry, that was Miguel Cervantes. I'm looking at the
3 wrong one so -- according to the PSR, he had one traced and --

4 **THE WITNESS:** One, okay.

5 **THE COURT:** One traced, and according to the PSR,
6 we're looking at paragraph -- excuse me, page 13, paragraph 45,
7 it indicates it was a Century Arms AK63D.

8 **THE WITNESS:** Your Honor, if I may on that firearm,
9 that one trace and you asked me if it was in Mexico, that one
10 firearm that belonged to Rene Hernandez was traced. It wasn't
11 found in Mexico, it was found here, it was found by Carlos
12 Zamudio under his seat at the time of his arrest.

13 **BY MR. ROMERO:**

14 Q So the one weapon that you can attribute to Mr. Hernandez
15 never went to Mexico.

16 A That's correct.

17 **THE COURT:** And that was the one when Mr. Zamudio was
18 arrested or --

19 **THE WITNESS:** Yes, your Honor.

20 **THE COURT:** Okay.

21 **MR. ROMERO:** And finally I want to go over this last
22 -- the last part of the PowerPoint for Mr. Rene Hernandez; can
23 I see that?

24 **MR. LOPEZ:** The last part of the PowerPoint?

25 **MR. ROMERO:** Yeah, the PowerPoint for Mr. Rene

1 Hernandez.

2 MR. LOPEZ: Oh, the bullets.

3 MR. ROMERO: Yes.

4 MR. LOPEZ: This.

5 BY MR. ROMERO:

6 Q It says: "The circumstances surrounding the arrest in
7 Corpus Christi." Did you read Mr. Hernandez's PSI?

8 A No, I didn't.

9 Q Okay, because during your testimony you testified, agent,
10 and please correct me if I'm inconsistent or wrong about this,
11 you testified that the victims identified Mr. Hernandez and
12 that he was arrested for indecent exposure, right?

13 A I did not say that he was arrested. No, he was not.

14 Q Okay.

15 A He was only a suspect.

16 Q But you said he was identified by the victims, right?

17 A His description and information was provided to Corpus
18 Christi. He was identified by a detective or investigator with
19 Corpus Christi Police Department.

20 Q So you -- so if you did say that the victims identified
21 him, you misspoke.

22 A I do not know if they identified him or not. I don't know
23 the course of their investigation right now. I don't know if
24 they were presented any photo lineups or anything Rene
25 Hernandez at this point.

1 Q Because do you know the disposition of that investigation?

2 A No, I do not.

3 Q Okay. Because under -- on page 24, paragraph 84, the
4 second sentence --

5 MR. LOPEZ: Your Honor, he doesn't --

6 Q -- or the third sentence --

7 THE COURT: Mr. Romero, --

8 MR. LOPEZ: This agent doesn't have access to the
9 PSR.

10 THE COURT: Did he say he didn't read the PSR. And
11 obviously I can read the PSR so I know what it says.

12 MR. ROMERO: All right.

13 THE COURT: And I have read the PSR.

14 BY MR. ROMERO:

15 Q But in any event, did you know that the victims -- that
16 all charges were dropped because the victims could not
17 positively identify Mr. Hernandez?

18 A I did not know that.

19 MR. ROMERO: Okay, your Honor, I will pass the
20 witness.

21 THE COURT: Okay, then moving on to Mr. Murillo,
22 please.

23 MR. LOPEZ: Do you need any of these slides, Alex?

24 MR. BALLESTEROS: If you could put the organization
25 chart (indiscernible) please.

1 **MR. LOPEZ:** Okay. This one?

2 **MR. BALLESTEROS:** Yeah. May I proceed, your Honor?

3 **THE COURT:** You may.

4 **MR. BALLESTEROS:** Good morning, Agent Rubbo.

5 **THE WITNESS:** Good morning.

6 **CROSS EXAMINATION**

7 **BY MR. BALLESTEROS:**

8 Q Let me just start with the chart. On Jesus Murillo, it
9 has a total number of 28 on the chart. Can you count those
10 weapons? Those are the weapons attributed to Mr. Murillo,
11 correct?

12 A That is correct.

13 Q Okay. Can you explain to the Court and to myself how you
14 came up with that number?

15 A I came up with that number from Miguel Cervantes stating
16 that he purchased directly for Murillo, that these -- knowing
17 that these guns were going directly to Murillo. Miguel
18 Cervantes stated he was with Rene Hernandez at the time of the
19 purchase of these firearms, and that leads us to believe that
20 Rene Hernandez and Miguel Cervantes purchased firearms at the
21 same time for Murillo. Marella Sandoval stated that she
22 purchased three firearms directly for Murillo. So that gave us
23 25. And then statements made from Zamudio and basically from
24 4473's linked at the time of the purchases, you could tell that
25 there was three additional firearms.

1 Q Which three?

2 A Three, I could not tell you which exactly, which three at
3 this time, no.

4 Q And, Agent Rubbo, that's part of the difficulty of your
5 limited investigative tools that you have to try to determine
6 who these weapons belong to, right?

7 A That is correct.

8 Q Okay. And I can come up with that number 28 a whole
9 different way just by looking at this chart, right?

10 A Yes.

11 Q Okay, and just on the math part, those 15 to Rene
12 Hernandez, those already include the seven from Miguel
13 Cervantes, right?

14 A Yes.

15 Q So 15 plus three for Marella Sandoval, that's 18, right?
16 Not 25. And then the five that Mr. Murillo had, four of which
17 he had at the time of his accident back in 2014, I believe.
18 And then the one that he was in possession of when he was
19 arrested on this offense, I believe that's 23 total.

20 A Right.

21 Q Eighteen plus five, 23.

22 A Right, and then -- yeah, and that doesn't include the nine
23 that he purchased in the straw purchase, and then he also
24 stated he had 25 firearms that he --

25 Q But that --

1 A -- gave to another individual.

2 Q And, Agent Rubbo, that is 23, right?

3 A Yes.

4 Q Okay, and these nine that you're referring to, those are
5 the nine from 2012 which have never been traced, have never
6 been recovered, no one knows where they're at, they were as
7 part of the statement that he made in a false report, right?

8 A Yes, I believe so.

9 Q Okay, and then you mentioned some other ones before I cut
10 you off. What were the other ones?

11 A So you had the -- and then you have statements made that
12 the -- another individual received 25 firearms from Murillo.

13 Q Thirty firearms, right? That was the package from
14 Zamudio. And those weapons, we don't know where they're at.

15 A Right.

16 Q Or how they got there. And all that number of that bag of
17 30 weapons, that came from one of the cooperating sources.

18 A That's correct.

19 Q And all the cooperating sources in this case have given
20 you or other ATF agents or law enforcement inconsistent
21 statements.

22 A Only two -- well, actually multiple cooperators --

23 Q Every single one in fact, right? Every single cooperating
24 source or individual that's given you information on these
25 statements that you're getting, you're coming up with the

1 numbers from, they've all given you inconsistent statements,
2 correct?

3 A Looking back, yes, yes.

4 Q Okay, right. And it's important to note that the
5 investigation for Mr. Murillo, it initiated from McAllen PD
6 because he was involved in an accident and he had weapons in
7 his possession, four weapons, and that led -- that McAllen PD
8 sent ATF a notice saying, hey, this is an individual who's
9 under indictment and he has weapons on him, correct?

10 A Yes.

11 Q That's where the investigation started.

12 A That's where one investigation started with him. As -- my
13 investigation was mostly from the bottom up. You had -- you're
14 talking about while under indictment, that's another special --
15 ATF Special Agent Dave Weiss, he was investigating that at the
16 same time. And then we had two other agents basically just
17 doing an interview of Sandoval, linked him into another --
18 basically the straw purchasing ring.

19 Q Right.

20 A So --

21 Q But that's sort of where that came about. It didn't lead
22 anywhere, he was under indictment, he had four weapons on him.
23 At that time, you indicated that these are weapons -- from
24 being asked by the prosecutor, you indicated that these are
25 weapons that tend to go to Mexico. He had two handguns, a

1 hunting rifle, and he did have an AK-47, and none of those --
2 those weapons were located here, they weren't being sent to
3 Mexico, correct?

4 A Those weapons were located here.

5 Q Okay.

6 **THE COURT:** Just let me interrupt here. Those
7 weapons, those four that were found at the time of the
8 accident, are any of those the ones identified here in
9 connection with this particular case? We have a -- I know you
10 haven't see the PSR, but we have a list of them. Any of those
11 -- these weapons?

12 **THE WITNESS:** No, your Honor, I believe --

13 **THE COURT:** Okay, so those are four extras.

14 **THE WITNESS:** -- totally separate from firearms
15 purchased by straw purchasers.

16 **MR. LOPEZ:** That's correct, your Honor.

17 **THE COURT:** Okay. And so you were able to identify
18 that those four weapons were purchased by other individuals.

19 **THE WITNESS:** Yeah, absolutely.

20 **THE COURT:** Okay.

21 **THE WITNESS:** And we have statements made by Murillo
22 that -- saying that he purchased them, that he got them at a
23 gun show --

24 **THE COURT:** Okay.

25 **THE WITNESS:** -- from other individuals, not these

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1 individuals present.

2 **THE COURT:** Although Murillo made that statement,
3 what I'm trying to confirm from you is that you have
4 confirmation that they were actually purchased by others.

5 **THE WITNESS:** I can't recall exactly, and that's
6 going into Agent Weiss's investigation. I can't recall whose
7 name was on the ATF form.

8 **MR. LOPEZ:** Your Honor, I believe I can ask a
9 question that may clear up, --

10 **THE COURT:** Okay.

11 **MR. LOPEZ:** -- if I may just briefly.

12 **THE COURT:** And I'm sorry to interrupt you --

13 **MR. BALLESTEROS:** No, no, please.

14 **THE COURT:** -- for just a second, but I want to
15 clarify this.

16 **FURTHER DIRECT EXAMINATION**

17 **BY MR. LOPEZ:**

18 Q If an individual purchases a gun at a gun show, is a Form
19 4473 going to be generated such that you can trace --

20 A No, --

21 Q -- who the buyer is.

22 A -- you wouldn't.

23 **THE COURT:** All right, go ahead.

24 **MR. BALLESTEROS:** May I proceed?

25 **THE COURT:** You may.

1 **CROSS EXAMINATION (RESUMED)**

2 **BY MR. BALLESTEROS:**

3 Q And, Agent Rubbo, but you've got testimony that indicates
4 that he owned two of the weapons and he purchased two of the
5 weapons at the gun show, correct?

6 A Yes.

7 Q On the date of the accident.

8 A On or around the time of the accident, yeah.

9 Q Around that time, right. He's indicating that he owned
10 two of those weapons prior to the date of the accident and he's
11 indicating that he purchased two of those weapons at the gun
12 show.

13 A I believe so.

14 Q And those were investigated by Agent Weiss and there's no
15 proof that those weapons went to Mexico or were destined to go
16 to Mexico.

17 A No, just the reasonable assumption and statements made
18 that he was working with individuals tied to the Gulf Cartel.

19 Q Reasonable assumption from an ATF agent, correct?

20 A Yes.

21 Q Okay, but on that date they had no information that those
22 weapons were going to Mexico.

23 A I do not recall him making a statement saying that he was
24 taking them to Mexico.

25 Q Because he did not make any statement.

1 A Okay.

2 Q Right.

3 MR. BALLESTEROS: And to -- if I could point the
4 Court to Table F on the PSR, I had it on my page 14 but I'm
5 going off the older version.

6 THE COURT: I have it.

7 BY MR. BALLESTEROS:

8 Q Those are the four weapons that were --

9 MR. BALLESTEROS: May I approach, Judge?

10 THE COURT: Yes.

11 Q Agent Rubbo, if I may show you Table F --

12 MR. LOPEZ: Your Honor, I don't really feel
13 comfortable with him showing PSRs to the agent, but --

14 MR. BALLESTEROS: I just want to --

15 THE COURT: It's really just the table so it doesn't
16 really include much beyond --

17 MR. LOPEZ: If the Court's --

18 THE COURT: Yeah, no, it doesn't --

19 MR. LOPEZ: -- okay with it, then I have no problem.

20 THE COURT: -- include much beyond that but -- and
21 it's really -- I mean, it has Ms. Sandoval there and he's
22 already testified about her as well, so --

23 MR. BALLESTEROS: I'm referring to Table F, Judge.

24 THE COURT: I have that but Table E right above that
25 on my --

1 **MR. BALLESTEROS:** Oh, got it.

2 **THE COURT:** -- PSR is Ms. Sandoval so --

3 **MR. BALLESTEROS:** Okay.

4 **BY MR. BALLESTEROS:**

5 Q Table F has October 17th, 2015, as the date they were
6 recovered. It's got the Kel-Tec, it's got the Rock Island
7 Armory .38, the Kel-Tec .380, the IO Inc. -- this is the AK-47.

8 A Yes.

9 Q And then the Remington 700 .308 rifle which is a hunting
10 rifle, correct?

11 A Yeah, that's correct.

12 Q Okay, so those weapons are included as part of the four
13 attributed to Mr. Murillo, right?

14 A Yes.

15 Q Okay, and those were the weapons recovered at the
16 accident.

17 A That's correct.

18 Q Okay. Three of them are handguns aren't normally used by
19 cartels, correct? Three of those weapons.

20 A I wouldn't think that's fair to say. I mean, they use all
21 kinds of different weapons.

22 Q Okay, sure. So total weapons for Mr. Murillo is -- are we
23 still going off the number 28?

24 A Let me see.

25 **THE COURT:** Let me ask you this way. We have -- just

1 looking at the chart here, we come up with 18 between Marella
2 and Miguel, correct? I mean, that's simple math.

3 **THE WITNESS:** Yes.

4 **THE COURT:** Okay. And then we have from your
5 investigation, you are convinced that between Felix Hernandez
6 and Mariano Garcia that there were additional weapons purchased
7 for Mr. Murillo, correct?

8 **THE WITNESS:** That is correct.

9 **THE COURT:** What you can't say is definitively which
10 ones were and specifically how many; is that correct?

11 **THE WITNESS:** That is correct, your Honor, I cannot.

12 **THE COURT:** Okay, and then you know that he
13 definitively had four weapons at the time of the accident.

14 **THE WITNESS:** Yes.

15 **THE COURT:** Okay, all right.

16 **BY MR. BALLESTEROS:**

17 Q And he had the additional number five is the weapon he had
18 when he was arrested for this offense which was also a handgun,
19 correct?

20 A Yes, that's correct.

21 Q Okay. And then Carlos Zamudio doesn't have a number next
22 to him. How many weapons approximately did Carlos Zamudio --
23 were attributed to Carlos Zamudio?

24 A I know that Carlos Zamudio had a lot of firearms.

25 Q Over a hundred.

1 A Right, yes.

2 Q Over 140.

3 A I just an approximate say that he had approximately a
4 hundred firearms associated with him.

5 MR. LOPEZ: I'll clear it up during --

6 MR. BALLESTEROS: Okay.

7 BY MR. BALLESTEROS:

8 Q And you indicate that Carlos Zamudio and Jesus Murillo
9 were working together is what you stated, correct?

10 A Yes, I did.

11 Q Okay, and how did you get that information?

12 A That was from a cooperating stating that not only he,
13 Zamudio himself, but Murillo were working for another
14 individual taking these firearms to a common individual, Luis
15 Morales, this Fanulano (phonetic).

16 Q But at any point in your investigation, whether it was the
17 cooperating testimony or actual -- anything in your
18 investigation that showed that Jesus Murillo and Carlos Zamudio
19 were purchasing weapons together?

20 A By "together," I mean, at the same time. There are
21 statements made that -- from Zamudio that he was with Murillo
22 as well as Hernandez brothers at the same time so --

23 Q Okay, what --

24 A -- or kind of going out in two separate vehicles, Zamudio
25 with Garcia, Murillo with either one or the other Hernandez.

1 Q Okay, what statement was that, that Carlos Zamudio was at
2 the same time getting together with everyone else here involved
3 or most of the other people involved and going and purchasing
4 weapons?

5 A Yeah, right about that, at the same time.

6 Q There's a statement.

7 A There is a statement.

8 Q And who made that statement?

9 A Carlos Zamudio.

10 Q Okay, and when you asked Carlos Zamudio, this is the
11 debrief, correct?

12 A This is correct.

13 Q And this is after he had already been arrested.

14 A This -- yes, sir.

15 Q Okay. And when you asked Carlos Zamudio about him working
16 for -- with Jesus Murillo, he indicated he did work with Jesus
17 Murillo.

18 A That they were out purchasing firearms for the same
19 individual, working towards the same goal but not -- I wouldn't
20 go so far as to say that these two were on the same page
21 working together, coordinating everything together.

22 Q It's more the fact that Zamudio indicated that he thought
23 Murillo was also purchasing for Morales-Medrano and his
24 brother.

25 A That's correct.

1 Q That would be an accurate way to represent it, right?

2 A Yes, sir.

3 Q Okay. And then the way the chart is here, Jesus Murillo,
4 it shows he recruited Marella Sandoval on her own, correct,
5 with Pedro Ruiz?

6 A Yes.

7 Q Pedro Ruiz hasn't been indicted or charged.

8 A No, he has not.

9 Q Okay, and all these statements that you mentioned earlier
10 on Marella Sandoval as far as her being recruited by Jesus
11 Murillo and Pedro Ruiz?

12 A Yes, at the same time.

13 Q Why do you make that assumption?

14 A Marella stated that she went out and she met with both
15 these individuals at a -- I believe it was a restaurant prior
16 to going to the purchase of the firearms. Both these
17 individuals came up with a plan. The reason why I say that it
18 was Pedro Ruiz who had an involvement was because Ruiz had a
19 closer relationship with Marella Sandoval. He identified her
20 as a person that could purchase for Murillo. Ruiz and Murillo
21 are close, have a close friendship together. After Ruiz
22 identified her and through statements made by Marella, Ruiz was
23 paid basically a finder's fee for finding Marella Sandoval for
24 Murillo. Sandoval stated that Murillo paid Ruiz approximately
25 two to \$300 for introducing her to him to purchase firearms for

1 him.

2 Q Okay, and this came from Ms. Sandoval to -- this is
3 statements that she made to Mr. Ruiz? How did she find out
4 that he was paid a finder's fee?

5 A She -- because she was there. She stated she was there,
6 stated that she knew at the time so --

7 Q And, Agent Rubbo, just to be completely clear, is it --
8 this plan that you're talking about, is it not the plan to
9 initially lie to the agents about what had happened to the
10 weapons?

11 A This is --

12 Q Or is it the plan that they got together and said let's
13 recruit Marella?

14 A That plan was devised after --

15 Q Right.

16 A -- the purchase of the firearms, after ATF started talking
17 to her.

18 Q You're saying Ms. Sandoval indicated that Mr. Murillo and
19 Mr. Ruiz got together, planned on recruiting her, and ended up
20 recruiting her.

21 A That's correct.

22 Q And that's in the reports provided by the U.S. Attorney's
23 office.

24 A Yes.

25 Q And Mr. Murillo normally paid \$300 for the purchase of the

1 firearms, correct?

2 A Anywhere from 150 to \$300, I believe.

3 Q Well, but --

4 A For her.

5 Q -- Mr. Murillo specifically normally paid \$300, not 150.

6 A Three hundred.

7 Q Correct?

8 A That's correct.

9 Q Right. Other individuals, Mr. Zamudio, other people, they
10 might have paid less, they might have paid more, correct?

11 A That's correct.

12 Q With Ms. Sandoval it was negotiated, correct?

13 A It was negotiated prior to.

14 Q And it was negotiated up, correct?

15 A Yeah, absolutely, yes, it was.

16 Q He gave her more money.

17 A Yes.

18 Q And so you're saying that even though he gave Ms. Sandoval
19 \$400 instead of the \$300 and then gave Mr. Ruiz money, that
20 wouldn't leave any profit to say for Mr. Murillo if he gave
21 Mr. Ruiz a finder's fee, correct?

22 A He would still make a profit off of it. You're looking at
23 \$400 a firearm just for her, negotiating a sale of it he could
24 get anywhere between 1,500 to 2,000 for that firearm.

25 Q Well, and we know he got 1,500 for them, right?

- 1 A So --
- 2 Q I mean, that's --
- 3 A -- based on what he said.
- 4 Q -- the information you have.
- 5 A Yeah.
- 6 Q Okay. Mr. Rene Hernandez, his -- he was recruited by
- 7 Mr. Cervantes, correct?
- 8 A No, it was actually -- from statements made, it was the
- 9 other way around.
- 10 Q Okay, but statements made by who?
- 11 A Statements made by Miguel Cervantes.
- 12 Q Okay, so Miguel Cervantes, the individual who cooperated
- 13 initially and is out on bond, he's the one that initially said
- 14 that he was recruited by Mr. Rene Hernandez.
- 15 A Yes.
- 16 Q Okay.
- 17 A And Rene Hernandez introduced him to Jesus Murillo.
- 18 Q Okay, but you have contradicting statements that indicate
- 19 that Mr. Murillo contracted -- or recruited Mr. Cervantes and
- 20 then Mr. Cervantes recruited Mr. Rene Hernandez only, correct?
- 21 A That's correct.
- 22 Q Okay. On Felix Hernandez, you've indicated that -- did
- 23 Miguel Cervantes also purchase weapons for Felix?
- 24 A For which individual?
- 25 Q For Felix Hernandez.

1 A No.

2 Q No, just for Rene Hernandez, okay.

3 A And I would say with Rene Hernandez for Murillo.

4 Q Okay, so Rene Hernandez and Miguel Cervantes, they
5 purchased weapons together for Mr. Murillo.

6 A Yes.

7 Q And Felix Hernandez, you said that at least one of those
8 weapons can be attributed to Mr. Murillo that he purchased.

9 A For Felix Hernandez?

10 Q Yeah.

11 A Yes.

12 Q The statement by the prosecutor was at least one weapon
13 can be attributed to Mr. Zamudio and one weapon could be
14 attributed to Mr. Murillo.

15 A That's correct.

16 Q Okay, and how do we know that?

17 A Basically through statements made going back through
18 statements made by Zamudio of who purchased what and when.

19 Q So all these are statements from individuals who have
20 cooperated that initially misled the law enforcement.

21 A Yes.

22 Q Okay, and now you're taking those statements at their word
23 because now they've got incentive to --

24 A We're taking those statements, trying to verify, bumping
25 off of other people's statements, 4473 of when they purchased,

1 what guns were purchased, kind of trying to pinpoint exactly
2 the specifics of what was said.

3 Q And I know, Agent Rubbo, that's really hard on your part,
4 but at the same time, when the Judge is going to make a
5 determination as to the amount of weapons, you for 100 percent
6 sure can't say that one of those weapons belonged to
7 Mr. Murillo.

8 A That's correct.

9 Q Okay. And all these statements also that the weapons were
10 going to Mexico, that's not in the reports. The reports
11 indicate that Mr. Cervantes overheard -- and this is the first
12 person that gave a debrief -- overheard Mr. Hernandez and
13 Mr. Murillo talking and that they indicated somehow that the
14 weapons were going to Mexico.

15 A Yes.

16 Q Okay. And some of these weapons did end up in Mexico and
17 were recovered in Mexico.

18 A Yeah, that's correct.

19 Q Okay, but other than Mr. Cervantes's statement, at no
20 point did anyone else say that these weapons were going to
21 Mexico.

22 A Well, Murillo did state that he was working with
23 individuals tied to the Cartel, to individuals working for
24 Comandante Toro.

25 Q Well, let me put it this way. The information that you

1 had that the weapons were going to Mexico was based on
2 Mr. Cervantes.

3 A The majority of it is information from Cervantes stating
4 that Murillo stated that that is correct, that what you said.

5 Q That he overheard.

6 A Yeah.

7 Q And at some point these weapons were also -- it was
8 indicated that these weapons were going up north.

9 A Yes, it was.

10 (Pause)

11 Q How many people did Mr. Murillo recruit based on this
12 chart?

13 (Pause)

14 A Based on this chart or over -- based on this chart, you
15 have several different individuals. You have five and that's
16 not including other individuals who may have purchased for
17 Murillo that we have not identified.

18 Q Okay. Which five would that be?

19 A Marella Sandoval, Miguel Cervantes, Rene Hernandez, and
20 even Felix Hernandez and Mariano Garcia.

21 Q So there -- you have information that Mr. Murillo
22 personally recruited these five individuals.

23 A I have information that he said that he recruited -- had
24 Miguel Cervantes go out -- or he didn't have Miguel Cervantes
25 go out, he stated that Miguel Cervantes provided four to five

1 of his friends to purchase firearms. Whether that was true or
2 not, --

3 Q We don't know. So you have information that Miguel
4 Cervantes, that Mr. Murillo recruited Miguel Cervantes and
5 Miguel Cervantes recruited other individuals.

6 A Yes.

7 Q How many we don't know.

8 A Correct.

9 Q Right. We don't have any proof of that, right?

10 A No.

11 Q We just know that he purchased several weapons and he
12 recruited at least Miguel Cervantes and maybe one or two other
13 individuals.

14 A He -- Murillo at least recruited Hernandez and Sandoval.

15 Q Well, the information you have or sure is that he
16 recruited Cervantes and Sandoval, right?

17 A Of those -- kind of Hernandez and Cervantes, I kind of put
18 those guys together --

19 Q Together.

20 A -- because they both were present, both --

21 Q Okay, but that would be three at most --

22 A But he picked out --

23 Q -- that he recruited.

24 A -- both of them and was a major factor in getting them to
25 the FFL to purchase firearms.

1 Q Right, and he paid them, he got them there, he took them.

2 A Yeah.

3 Q There's information that he took them, but just those
4 three, correct?

5 A Correct.

6 Q Okay, the other ones you're not sure.

7 A Not a hundred percent sure.

8 Q Right.

9 MR. BALLESTEROS: I have no further questions, your
10 Honor, I'll pass the witness.

11 MR. LOPEZ: Briefly, your Honor.

12 THE COURT: Briefly.

13 REDIRECT EXAMINATION

14 BY MR. LOPEZ:

15 Q There was one statement made and I just want to be clear
16 on the record, we do not have any information that Murillo
17 purchased for Lizandro Salvador Morales-Medrano; is that
18 correct?

19 A That is correct.

20 Q Okay, the next thing is in relation to Felix Hernandez,
21 there were statements made that he purchased for both Carlos
22 Zamudio and Jesus Murillo, and is that why we're able to
23 attribute at least one gun to both of those individuals?

24 A That is correct.

25 Q Defense counsel made a statement that we're just taking

1 these statements at face value. Did you go back and look at
2 the 4473's and/or the timing of these purchases through sales
3 receipts to indicate that Felix Hernandez did make some
4 purchases at -- or on the same day, sometimes even within
5 minutes, as some of the other individuals that were recruited
6 by Jesus Murillo?

7 A Yes, you have statements made that certain firearms were
8 purchased, certain firearms being -- whether it be a SCAR 17S
9 or something descriptive as even two handguns from Felix
10 Hernandez. At the time, you can go back and through the use of
11 4473's, you can tell who was purchasing firearms either at the
12 same time or relatively close, and relatively close by a few
13 minutes apart.

14 Q And is that the same thing that -- we didn't -- you don't
15 just take Mr. Zamudio's statements at face value. You did the
16 same thing with Mariano Eberth Garcia, you went back, checked
17 on 4473's, and there are some purchases that he makes within
18 minutes of some -- of Mr. Rene Hernandez as well at some of
19 these FFLs.

20 A That is correct.

21 **MR. LOPEZ:** Okay, your Honor, I believe that that
22 sums up.

23 **THE COURT:** Okay, all right. Agent, you may step
24 down, okay.

25 **THE WITNESS:** Thank you, your Honor.

1 **(Witness steps down)**

2 **THE COURT:** Okay, let's take a really short break and
3 then I'll come back and we'll begin with the legal objections.

4 **MR. LOPEZ:** Okay.

5 **THE MARSHAL:** All rise.

6 **(Recess taken from 10:37 a.m. to 10:44 a.m.)**

7 **THE MARSHAL:** All rise.

8 **THE COURT:** All right, thank you, you may be seated.
9 Okay, let me -- I think I'll work through the objections in the
10 order in which the testimony was presented, so let's begin with
11 Mr. Cervantes. Let me make sure I find it here. Okay, and
12 let's right now address the legal objections and then we'll
13 come back to hear a full allocution from both counsel and the
14 Defendant. And then as I'm addressing objections, to the
15 extent that there's any objection made as to one defendant that
16 is the same objection made as to any other defendants, although
17 here I don't think we have a lot of that, but to the extent
18 that it is, then counsel can speak up at the same time. And I
19 may not recognize it right away, but you feel free to let me
20 know that that applies to you as well.

21 So, okay, so as to Mr. Cervantes, I think that the
22 first one which I think for the Court is easier is as far as
23 the number of weapons here involved. In that regard --

24 **MR. LOPEZ:** And the Government would concede that as
25 well, your Honor.

1 **THE COURT:** Okay, so in that regard, in light of the
2 fact that even though Mr. Cervantes may have claimed eight,
3 that it would be certainly easy I think to misstate that. The
4 Court will sustain the objection as to the enhancement. Yes,
5 but when we get to that part. As to the enhancement for
6 paragraph 65, that will drop to a two rather than the four, so
7 that one is easily taken care of. The other one that we have
8 here, and let me go to that one before I even -- I know I'm
9 making the objections for you here, Mr. Garcia, but the other
10 one that I have, and that is to paragraph 66 and 67, and this
11 may apply across the board to some other defendants. To the
12 extent that the trafficking enhancement is applied, part of
13 which the consideration there, of course, you know, that two or
14 more weapons is easy to establish. But part of the
15 consideration there is the part about going to an individual
16 who intended to dispose of the firearms unlawfully, in that
17 regard and to the extent -- now, we may have some issues as far
18 as they were going to a prohibited person, but to the extent
19 that we're looking at this enhancement and that the basis for
20 the enhancement is that the weapons were going to an individual
21 who intended to dispose of the firearms unlawfully, and that
22 unlawful activity was the going to Mexico, which I think for
23 Mr. Cervantes is one of them. And then to the extent that we
24 have an enhancement under (b)(6) for the same going to Mexico,
25 that the Fifth Circuit has said is double counting, so that

1 will not be applied. And I think for -- so for Mr. Cervantes,
2 what we do have the PSR reflecting for him as to that
3 enhancement for 66, the (b)(5) is because they were going to
4 Mexico, and then we have the same thing. But if there's --

5 **MR. LOPEZ:** Your Honor --

6 **THE COURT:** -- something else to consider, I'll
7 certainly --

8 **MR. LOPEZ:** -- I believe there is something else to
9 consider, your Honor. These firearms are being purchased by
10 Mr. Cervantes. The only basis for the (b)(5) is not that they
11 were going to Mexico, but they're also being transported to
12 unlawful users of --

13 **THE COURT:** Well, what it indicates is they're being
14 transferred -- the PSR -- and I did -- keep in mind, now, I've
15 heard a lot of testimony now here and of course I've read all
16 the PSRs together. The PSR reflects that they were transferred
17 to Rene Hernandez and so I guess the Government's position is
18 that Rene Hernandez himself is a prohibited person because of
19 the drug use. I can sort of address that but I sort of need to
20 address it through Rene Hernandez. So if that's your position,
21 I can --

22 **MR. LOPEZ:** That's correct, your Honor.

23 **THE COURT:** -- consider it, okay.

24 **MR. LOPEZ:** That is the position.

25 **THE COURT:** Okay.

1 **MR. LOPEZ:** But the Government does not seen any
2 other additional basis beyond those two for the trafficking.

3 **THE COURT:** Okay, so in that regard, I may have to
4 sort of address both of these together, but maybe let me -- and
5 my concern in that regard would be sort of a sign as the
6 trafficking enhancement and the unlawful activity enhancement
7 both being based on the going to Mexico because the base
8 offense level is also determined on some of the same. And if
9 we're looking at the base offense level and making that 20
10 based on the fact that they're being transferred to a
11 prohibited person -- but now I will say that I didn't
12 specifically look at that issue but I would tend to believe
13 that that would be the same prohibited double-counting.

14 **MR. LOPEZ:** I unfortunately do not have an answer for
15 the Court. I've gone and looked for that issue at length in
16 various other cases and I have yet to find a court that
17 addresses the application between 2K2.1's base offense level
18 and the (b)(5) section, your Honor, in relation to the
19 prohibited person aspect.

20 **THE COURT:** So what I would say in that regard is
21 that generally speaking, the guidelines, there are sometimes
22 when the guidelines speak directly to even though this
23 enhancement is applied, this other specific enhancement can
24 still be applied. In this case, the guidelines, in looking at
25 the base offense level, do not speak specifically to whether if

1 the base offense level is based as one of the considerations is
2 that they're going to a prohibited person, then you can still
3 apply (b)(5) based on the same conduct. So the guidelines
4 don't speak directly to that, so absent that then I would say
5 that generally speaking, if it is the same conduct, the same
6 conduct is not considered for two separate enhancements, that
7 generally speaking that is -- the same conduct only warrants
8 two separate enhancements when the guidelines specifically so
9 provide. So we're looking under paragraph 64 at the base
10 offense level, if we're looking at that one, based on the fact
11 that the transfer was to a prohibited person, that being Rene
12 Hernandez, then I would say we would not apply --

13 **MR. LOPEZ:** The trafficking.

14 **THE COURT:** -- the trafficking -- well, we could
15 apply the trafficking as -- because they're going to Mexico,
16 but we wouldn't apply then 67. So in other words, we're going
17 to have one of these knocked out, I think.

18 **MR. LOPEZ:** And if that's the Court's position, the
19 Government does understand that's the Court's position.
20 Unfortunately, your Honor, I've searched at length to figure
21 out what the Fifth Circuit would do and any other courts in the
22 field for that matter and I've yet to find anything on --

23 **THE COURT:** Well, I think based on what they have
24 done as to (b)(5) and (b)(6) in finding that you can't count
25 this -- use the same conduct, then -- and even though I

1 recognize that that is based on specific language they
2 reference in the guidelines, again, absent specific direction
3 under the guidelines that say apply both enhancements, I think
4 the rule of leniency at the very least would say that you do
5 not apply both enhancements here.

6 **MR. LOPEZ:** Very well, your Honor.

7 **THE COURT:** Okay, all right, so then maybe let's
8 begin with the issue here as -- and, Mr. Garcia, maybe now I'll
9 let you speak, having already called you forward, maybe now
10 I'll let you speak. Okay, --

11 **MR. GARCIA:** Yes, Judge.

12 **THE COURT:** -- so the -- let's go ahead and just go
13 down one by one, and to the extent that I need to sort of come
14 back to another defendant at the same time, I'll do so.

15 **MR. GARCIA:** Yes, your Honor. The only remaining
16 objection that I have is the role, your Honor. If we -- the
17 Court would consider maybe even a minimal role, your Honor.
18 His sole involvement was that they used his signature and his
19 identity, your Honor. He was even literally picked up at his
20 house, driven around, told what to purchase, given the money to
21 purchase these firearms; and as soon as he purchased him, they
22 were taken -- he -- you know, from his possession. That was
23 the extent of his role in this offense so we'd has the Court to
24 consider a minimal role.

25 **THE COURT:** Okay, you know, I understand the

1 arguments. Again, the guidelines speak to less culpable than
2 the average participant. And here this is one of those, you
3 know, cases where we have a lot of participants, and I just
4 don't see that Mr. Cervantes is less culpable than the average
5 participant. I certainly don't think that he rises to any kind
6 of leadership role, management, organization, or anything of
7 that nature, but I certainly also don't see that he is less
8 culpable than the average participant, so that request is
9 denied. I do have the Government's motion as to him I believe,
10 correct?

11 **MR. LOPEZ:** It was filed, your Honor.

12 **THE COURT:** Okay, all right, so I do have that and
13 that will be considered when we come back to him, but I do have
14 that. So then to be clear -- and I think the easiest one for
15 Mr. Cervantes to do is to basically knock out the enhancement
16 on paragraph 67 so that that ends up not applied whatsoever.
17 So --

18 **MR. GARCIA:** And the minus --

19 **THE COURT:** And the -- right, correct.

20 **MR. GARCIA:** -- on the --

21 **THE COURT:** So -- okay, so I've --

22 **MR. GARCIA:** -- that second firearm.

23 **THE COURT:** -- sustained the objections to paragraph
24 65. That is only a plus two. And that's the same objection as
25 to paragraph 67. And so then we are for Mr. Cervantes a 26

1 before the -- and as to all these defendants, is there a motion
2 from the Government as to the third point?

3 **MR. LOPEZ:** To the extent that it applies, your
4 Honor, the Government so moves.

5 **THE COURT:** Okay, all right, so then I think for
6 Mr. Cervantes, we would be 26 -- at 23.

7 **MR. LOPEZ:** Yes, that's the Government's calculation,
8 your Honor.

9 **THE COURT:** Okay, and then we'll come back again as I
10 indicated earlier. Let me find a chart here. I have
11 Mr. Cervantes at 46 to 57.

12 **MR. LOPEZ:** That's what the Government has as well,
13 your Honor.

14 **THE COURT:** Okay, all right, so then we will come
15 back -- having dealt with the guideline objections, we'll come
16 back to Mr. Cervantes. Okay, let me move to Ms. Sandoval.

17 **MS. GUTIERREZ:** Good morning, your Honor, Lilly
18 Gutierrez on behalf of Ms. Sandoval.

19 **THE COURT:** Okay, and for Ms. Sandoval, let me -- the
20 objection that I would like to start with is the objection as
21 far as whether she had a prior conviction. In that regard, the
22 Court did some research. There is a case out of the Fifth
23 Circuit, it's *United States versus Padia* -- and it's spelled P-
24 A-D-I-A, not I-L-L-A -- that speaks to the issue. And they
25 don't use the term "deferred adjudication," but clearly what

1 they are referencing there is a deferred adjudication. Under
2 Texas law, the charge in that case was a 922(h) and 924 charge.
3 So looking at that particular statute and what the Fifth
4 Circuit says is that basically the fact that it is -- and,
5 again, they are not using the term "deferred adjudication," but
6 what they specifically say is the -- that in that case the
7 defendant was placed on probation for three years, then the
8 probation was reduced and probation was terminated. The court
9 then set -- the State Court then set aside the guilty verdict
10 and dismissed the indictment. So that's basically deferred
11 adjudication, even though, again, they don't use that term.

12 **MR. LOPEZ:** Your Honor, in reference to the
13 conviction aspect of it, the Government concedes that portion.
14 However, your --

15 **THE COURT:** Concedes what?

16 **MR. LOPEZ:** The fact that she wasn't actually --

17 **THE COURT:** Well, this is -- well, let me finish
18 here, okay? The Fifth Circuit it says basically that that does
19 not alter the status as a convicted felon under Federal gun
20 laws. So I'm not sure why the Government's conceding.

21 **MR. LOPEZ:** Your Honor, --

22 **THE COURT:** Is there something newer? I mean, if
23 there's something --

24 **MR. LOPEZ:** -- if at the time that they are under
25 deferred adjudication, the Government does agree that at that

1 point in time they are prohibited. To the extent that it's a -
2 - something that is a -- it's a --

3 **THE COURT:** Well, but see here again the Fifth
4 Circuit -- okay, so in the -- in this case, the defendant on
5 August the 26th of 1977 sold the rifles, okay? And what the
6 record established was that on May the 2nd of 1977, the court
7 set aside the guilty verdict and dismissed the indictment. So
8 that was before he sold the rifles. I understand what the
9 agent testified to, but what the Fifth Circuit is looking at,
10 the agent does not determine the law in the case. I do,
11 so --

12 **MR. LOPEZ:** No, and I understand that, your Honor.
13 But I had a case fairly recently where I looked up this issue
14 and --

15 **THE COURT:** And do you have a case for the Court?

16 **MR. LOPEZ:** I don't have it on me at the time, your
17 Honor. It was unrelated to the instant matter, your Honor, but
18 where -- and if you give me some time, I don't want to misstate
19 the law to the Court, but it was my impression that if it --
20 the indictment was pending while they were on deferred
21 adjudication, at that point in time (indiscernible)

22 **THE COURT:** Well, but because that's under
23 indictment.

24 **MR. LOPEZ:** Yes.

25 **THE COURT:** That -- what that makes it is under

1 indictment. That's a different provision of the law.

2 MR. LOPEZ: Yes.

3 MS. GUTIERREZ: Your Honor, may I interject?

4 THE COURT: Uh-huh.

5 MS. GUTIERREZ: Yes, I also did some research and I'm
6 surprised I didn't find the -- did you say 1978 --

7 THE COURT: Seventy-eight.

8 MS. GUTIERREZ: -- case?

9 THE COURT: Seventy-eight.

10 MR. LOPEZ: Your Honor, if it is a '78 case, there
11 were some changes to the definition of a convicted person
12 within 921 that may be the basis --

13 THE COURT: Well, that might be the basis although I
14 will say, I mean, I looked to see the history of this and I
15 didn't see that it was subsequently -- but it may be not come
16 up since then, but --

17 MS. GUTIERREZ: And, your Honor, I found nothing on
18 point with respect to this specific issue. All the cases that
19 I read had to do with a person being on deferred adjudication,
20 and while they're on deferred adjudication, they're considered
21 to be under indictment.

22 THE COURT: Correct, I don't disagree with that.

23 MS. GUTIERREZ: And so --

24 THE COURT: That's easy.

25 MS. GUTIERREZ: -- I do think that it's interesting

1 that this *Padia* case does indicate that even though the case
2 was dismissed, the action that occurred subsequent to that is
3 considered a conviction. And I say that because the case law -
4 - I mean, well, the commentary sends us to two different other
5 statutes. Well, one statute, 922 I believe, and two sections.
6 And both of those sections indicate what is a prohibited
7 person.

8 **THE COURT:** Correct.

9 **MS. GUTIERREZ:** Nothing in that -- those sections
10 state that a person who's on deferred adjudication is a
11 prohibited person. So I think that the crux of this is the --

12 **THE COURT:** Well, actually -- and I'm looking
13 specifically at the statute regarding prohibited person. And
14 the *Padia* case, I came across it by the annotations to 922 and
15 so it was under 922 that I found the *Padia* case. So I'm
16 willing to -- if -- now, again, when we talk about "under
17 indictment," that's a different issue, and I don't know in your
18 case if you were looking at the issue under indictment only and
19 I, you know, have no dispute with that. But this is what I
20 found. And, again, --

21 **MR. LOPEZ:** I can --

22 **THE COURT:** -- I have to follow the law. I can't --

23 **MR. LOPEZ:** No --

24 **THE COURT:** -- just go based on instinct so --

25 **MR. LOPEZ:** No, no, I understand, your Honor. I

1 don't anticipate that it would take me very long to rush back
2 down to the office. And I'm not meaning to instruct the Court
3 (indiscernible)

4 **THE COURT:** Okay, well, and I have no problem with we
5 need to look at it a little bit closer but, again, I -- you
6 know, this is what I've come across. And I looked at various
7 afterwards and I will say I didn't find anything in the last
8 five years but -- and if there is a change in the statute that
9 might make a difference, 922, you know, doesn't -- and I looked
10 there, and really when I was looking at it, you know, it's
11 basically convicted felon and this is what I came across so --

12 **MR. LOPEZ:** Your Honor, it's not so much though the
13 change in the 922 statute as much, if I remember correctly --
14 and if the Court would indulge us for just a little bit of time
15 in relation to this issue as to this Defendant, the Government
16 would certainly appreciate it. As far as I remember, there was
17 changes to the 921 statute that proposed the definitions that
18 should be followed in 922.

19 **THE COURT:** Except that what we're looking at here --
20 well, and I guess 921 might come into play. But when we look
21 at here, what we're looking at is the guidelines specifically
22 define "prohibited person" as defined by 922. So do we
23 incorporate 921 into 922? I don't know because the guidelines
24 reference 922.

25 **MS. GUTIERREZ:** Yes, your Honor, but if we were to

1 read 922 based on the definitions of 921, --

2 **THE COURT:** Yeah.

3 **MS. GUTIERREZ:** -- I do think that they --

4 **THE COURT:** They might, yeah.

5 **MS. GUTIERREZ:** -- apply. And, your Honor, with
6 respect to the fact that the Court has provided this case that
7 I was unaware of, I also would request a short amount of time
8 in order to -- this is obviously a very important objection
9 because it has a great difference in the levels of where we
10 believe we stand and where we might end up if this objection is
11 overruled.

12 **THE COURT:** I certainly don't, you know, disagree
13 with that. I -- you know, and we can one -- do one of two
14 things. We can return -- I don't know what time we're going to
15 be done, but we can return either this afternoon or if
16 necessary we could pick it up tomorrow morning. I'm just
17 looking at 921 very quickly to see whether it gives us anything
18 because if the answer is there and it supports the objection,
19 then that would be easy to take care of. See -- and, you know,
20 I'm not sure that that's going to change anything because when
21 I'm looking at -- and it's Section 20 under 921 speaking to the
22 term crime punishable by imprisonment for a term exceeding one
23 year, it states that that shall be determined in accordance
24 with the law of the jurisdiction in which the proceeding is
25 held, so that would be determined by Texas law. And then it

1 does go on to say -- to state, "Any conviction which has been
2 expunged or set aside for which a person has been pardoned or
3 has had civil rights restored shall not be considered a
4 conviction." And in that regard, one of the things that I
5 don't remember if it was this case or some of the other cases
6 that I was looking at, but basically spoke to the fact that in
7 Texas, a deferred adjudication is not considered an expunged
8 record unless, I mean, in some cases they may ultimately be
9 expunged, but that's not the same thing. And it is not one
10 where it is set aside and civil rights restored.

11 **MS. GUTIERREZ:** I'm sorry, your Honor, did you read
12 that an offense that is set aside or conviction that is set
13 aside?

14 **THE COURT:** No, a -- any conviction which has been
15 expunged or set aside.

16 **MS. GUTIERREZ:** And that's where I think that the
17 deferred adjudication never gets to a conviction to be set
18 aside.

19 **THE COURT:** I understand what you're saying but I
20 know what the Fifth Circuit is saying as well and because --

21 **MR. LOPEZ:** And I think that was the definition that
22 gave us some pause, your Honor, to be honest because I believe
23 the case that the Court has cited predates the statutory
24 amendments to that definition, which is what caused us some
25 pause --

1 **THE COURT:** Although I do -- I will tell you that in
2 looking at some of these cases, you know, that was -- that
3 language was specifically referenced and it really didn't
4 change anything. So nonetheless I will give you an
5 opportunity, so I guess the question is do we pick up some time
6 this afternoon or --

7 **MR. LOPEZ:** I -- your Honor, I think I could be ready
8 this afternoon. This is an issue that I've already looked at.
9 I just need to go back and pull that same research but I don't
10 know --

11 **THE COURT:** I -- Ms. Gutierrez?

12 **MS. GUTIERREZ:** Your Honor, I'd prefer tomorrow
13 morning. I will be here for a preliminary and detention
14 hearing at 11:00 o'clock --

15 **THE COURT:** Okay.

16 **MS. GUTIERREZ:** -- so the Court could set it any time
17 before that. But I would like that opportunity to --

18 **THE COURT:** To look at that.

19 **MS. GUTIERREZ:** -- do it without haste.

20 **THE COURT:** Okay, I have a very long docket tomorrow.
21 That's what I see. Incidentally, and I'm so sorry to say, I'll
22 probably make a formal announcement later on, but incidentally
23 Ms. Belmares is leaving me the first week of April. But it's
24 all good. Ms. Belmares is actually going to -- and I hope she
25 is not bothered by the fact that I'm announcing, but

1 Ms. Belmares is going to start law school in August.

2 **MS. GUTIERREZ:** Congratulations.

3 **THE COURT:** And so she will be leaving me. And
4 Ms. Julie, whose name I have -- last name I have now forgotten
5 -- Sanchez will be my new case manager.

6 **MR. LOPEZ:** Your Honor, --

7 **THE COURT:** So here's what I started to say is I have
8 a very long docket tomorrow morning because I've moved my
9 afternoon docket to the morning before I have to head out to
10 Laredo tomorrow.

11 **MR. LOPEZ:** Your Honor, if I may briefly, your Honor,
12 I also believe that while this issue is of great academic
13 importance, and certainly for her sentencing guideline
14 purposes, nonetheless the Government still believes that it
15 should be a base offense level 20 because it was being
16 transferred over to the Defendant Murillo who was subsequently
17 going to be exporting it. There (indiscernible)

18 **THE COURT:** And in that --

19 **MR. LOPEZ:** -- under indictment.

20 **THE COURT:** Yeah, we did have the testimony about her
21 knowing which, you know, I'll deal with as well, but I still
22 think that we need to make a determination on this. I would
23 like to make a determination on this as well.

24 **MR. LOPEZ:** Very well, your Honor.

25 **THE COURT:** Okay, so my hesitation is for tomorrow

1 morning. And I don't know what our docket looks for -- like
2 for next week and -- for next week. Well, so our options would
3 be this afternoon. Really -- I think we really need to do it
4 this afternoon or next week.

5 **MS. GUTIERREZ:** Your Honor, if I have to come back
6 this afternoon, then I will. I just don't know that I'll have
7 enough time to research it, this, and --

8 **THE COURT:** Well, I certainly don't want to limit
9 your time. Is next week a problem?

10 **MS. GUTIERREZ:** It is, your Honor. However, I do
11 know that on the 26th in the morning I will be in Starr County
12 on a murder --

13 **THE COURT:** Okay.

14 **MR. LOPEZ:** Your Honor, --

15 **MS. GUTIERREZ:** -- pretrial hearing.

16 **MR. LOPEZ:** -- with the Court's indulgence and with,
17 I mean, Defendant -- I don't know how defense counsel feels
18 about it, but can we reconvene this afternoon and, to the
19 extent she feels comfortable to proceed, we can proceed? If
20 she needs --

21 **THE COURT:** I just --

22 **MR. LOPEZ:** -- more time, the Government's
23 (indiscernible)

24 **THE COURT:** Where do you office, Ms. Gutierrez?

25 **MS. GUTIERREZ:** I office in Edinburg, south Edinburg.

1 But, your Honor, this is my plan. My plan is to stay through
2 the rest --

3 **THE COURT:** Obviously here, yeah.

4 **MS. GUTIERREZ:** -- sentencings, hear that out, and so
5 by -- depending on what time we're set, --

6 **THE COURT:** Yeah.

7 **MS. GUTIERREZ:** -- it's not -- really not going to
8 give me that much time.

9 **THE COURT:** Yeah, and I honestly don't know what time
10 we'll be finished either so there may be no real afternoon --

11 **MS. GUTIERREZ:** Yes.

12 **THE COURT:** -- okay. Okay, then I'll -- other than
13 the 26th next week, Ms. Belmares, even if it is on a day when I
14 have civil matters or whatever.

15 **THE CLERK:** The 27th?

16 **THE COURT:** On the 27th?

17 **MS. GUTIERREZ:** Your Honor, may I grab my calendar?

18 **THE COURT:** So, okay, why don't you do that and then
19 we'll -- you can go ahead and be seated, Ms. Sandoval. Why
20 don't you do that and we'll figure out what day we can pick
21 this back up again then on Ms. Sandoval?

22 **MR. LOPEZ:** Your Honor, to the extent the Government
23 gets any information one way or the other, I'll file a
24 supplemental letter brief for the Court.

25 **THE COURT:** Certainly. And, Ms. Gutierrez, you can

1 do the same thing but --

2 **MS. GUTIERREZ:** Very well, your Honor.

3 **THE COURT:** Okay, let's move then to Felix Hernandez.

4 **MR. GARZA:** Your Honor, we have presented one
5 objection but I believe the Court had taken it up a little
6 while ago and had made a ruling on it, Judge, which is the same
7 one about trafficking, Judge.

8 **THE COURT:** Well, no, --

9 **MR. GARZA:** It is the issue that we --

10 **THE COURT:** -- Mr. Hernandez did not have double
11 counting. Mr. Hernandez had an enhancement under (b)(5) but no
12 enhancement under (b)(6) so there's no double-counting as to
13 him.

14 **MR. GARZA:** Okay.

15 **THE COURT:** Okay, so to the extent that you want to
16 argue that objection, I can --

17 **MR. GARZA:** My objection was -- and I respectfully,
18 Judge, make a note on the objection that I had. It was -- and
19 because we had several PSRs, we did address paragraph 64 and
20 18, Judge, and that basically was in reference to the
21 disposition of the transporting -- if I may read the objection,
22 Judge?

23 **THE COURT:** Yes.

24 **MR. GARZA:** Basically I said that there was, "No
25 evidence indicating that Mr. Hernandez had intended to

1 transport, transfer, or otherwise dispose of a firearm to
2 another individual." He has never had any prior criminal
3 convictions, Judge, any prior dealings of trafficking firearms.
4 The cooperating -- the Court heard the testimony, your Honor.
5 Part of the questions that were asked, your Honor, is in
6 reference to whether these weapons were going to the north or
7 the south. You know, in conferring with my client and even
8 asking the officer, the special agent, they didn't know, Judge.
9 They initially -- the persons that was cooperating in this
10 particular case was Zamudio, and I hate to say it but I'm going
11 to say it, your Honor, but the fact of the matter is he was --
12 he knew his role, he knew where he was. The agent stated that
13 there was inconsistencies in the testimony from the beginning.
14 Fake statements were made, fake documentations, your Honor. My
15 client in this was one of the individuals that was arrested at
16 the back end of the case. And in talking with him and so
17 forth, all he did was a straw purchaser, that's what he did, he
18 purchased weapons.

19 **THE COURT:** Well, and so that in part addresses part
20 of what your objection that no evidence that he's -- intends to
21 transfer the weapons. And clearly he did because they were
22 straw purchases. So that's part of the offense itself so --

23 **MR. GARZA:** But the fact that he had knowledge, your
24 Honor, that these weapons were for Mexico, he had no knowledge.
25 I mean, he met these individuals in the neighborhood that they

1 were and --

2 **THE COURT:** So let me address that. And I have read
3 your objection as well. The first thing to do, and this is
4 across the board as to all Defendants, to keep in mind that the
5 Court's ruling on these factual matters is based on a
6 preponderance of the evidence rather than beyond a reasonable
7 doubt; that in that regard, we do have some confirmation by the
8 documents of the nature of the purchases as amongst all these
9 individuals, that many of them or at least some number of them
10 were made by the individuals around the same time at the same -
11 - at the (indiscernible) that, you know, even by a minute they
12 were in close proximity so that there's knowledge across the
13 board that these are being made to -- sort of at the same time.
14 Now, I recognize that Mr. Hernandez did not himself make any
15 admissions at the time that he was initially being investigated
16 but, you know, he's the brother to Rene Hernandez, so we have
17 that. And I think it would be -- or go against common sense to
18 believe that there is not some knowledge that is sort of shared
19 knowledge, transferred knowledge, in that regard. It might not
20 be the case if they were, you know, living in different
21 locations, but clearly they are living in the same house. That
22 there's no doubt that the weapons are in fact going to Mexico,
23 so it's not speculation about where they were actually going.
24 And I realize, you know, we have that after the fact, but
25 nonetheless that this is one of those cases that, taking into

1 account the type of weapons being purchased, the volume of
2 weapons being purchased, the connection between the various
3 Defendants here, the manner of transfer, and the general
4 knowledge of -- and I don't base my decision solely on the fact
5 that we live in this area that generally speaking, unless
6 you've been in a coma for the last ten years, that it is well-
7 known that the cartels seek these types of weapons and that the
8 cartels are very interested in purchasing these type of
9 weapons, that there is a lot of activity involved in the
10 trafficking of these kinds of weapons, and that it is almost a
11 constant, ongoing -- not almost, it is a constant, ongoing
12 issue. And considering all those particular facts as they are
13 set out in the reports, that I don't think there's any doubt
14 that they are in fact going to Mexico. And I don't know if
15 there's anything else that the Government would point out in
16 that regard.

17 **MR. LOPEZ:** Judge, there's just one other fact that I
18 think is pertinent to this objection, is we also have
19 statements made that this individual was in possession of a bag
20 of 30 firearms and was talking to Mr. Zamudio about that same
21 bag of firearms and the subsequent transfer of that firearm I
22 think is pertinent to determining that he himself knew that he
23 was trafficking firearms.

24 **THE COURT:** And, yes, I made a note of that and then
25 I forgot to mention that but that certainly also goes to that

1 as well. And in making this determination, the Court considers
2 all the information presented in the PSR, as well as the
3 testimony from the agent.

4 **MR. GARZA:** Your Honor, and just for purposes of the
5 record, Judge, yeah, Zamudio was making those statements. And
6 the reason he was making those statements is because they were
7 self-serving on his behalf. He knew his category, he knew he
8 was -- I go back, my client was arrested at the backend of this
9 case. In approaching the Government, basically the case had
10 basically had already been compiled, they had already made
11 their decisions and, therefore, that was the decision that was
12 made. However, when the agent came up here and testified, he
13 himself said, no, they initially told him they were going north
14 and, therefore, my client in that position -- he'd never been
15 involved in anything like this before, Judge. You know, in
16 terms of -- you know, if you look at his history, even juvenile
17 history, being raised by a mother only, you know, and living in
18 the neighborhood that they lived, the resources and so forth,
19 it was something that was brought before him, two, \$300 to --
20 one would lead to believe and that's the reason why I make the
21 objection vigorously, Judge, is the fact that he did have no
22 knowledge that it was going.

23 **THE COURT:** Well, --

24 **MR. GARZA:** He did accept responsibility and he will
25 accept responsibility for his actions --

1 **THE COURT:** I think --

2 **MR. GARZA:** -- because he did do the purchases.

3 **THE COURT:** Okay, and the guidelines speak to knew or
4 had reason to believe. And I think that the fact that he's
5 told one thing does not change the fact that he knew or had
6 reason to believe that they're going to Mexico. Again, we're
7 looking -- for Mr. Hernandez specifically, we're looking at a
8 purchase of 15 weapons in the course of a month, okay? And it
9 belies common sense -- and, again, he -- those are the weapons
10 that he personally purchases. But he is certainly
11 knowledgeable of other weapons being purchased. There's
12 brother's involvement here. And it belies common sense, even
13 if you are told one thing, to believe that that is the case.
14 And so I -- you know, even accepting that he was told they're
15 going north, again, that belies common sense. There's nothing
16 different from purchasing weapons here as, you know, anywhere
17 else in the United States. You know, the background check is
18 a background check. And so the Court does make a factual
19 determination in this case that this Defendant knew that the
20 weapons were going to Mexico.

21 **MR. GARZA:** So the Court will overrule --

22 **THE COURT:** Overrule --

23 **MR. GARZA:** -- the objection.

24 **THE COURT:** -- the objection.

25 **MR. GARZA:** All right, your Honor.

1 **THE COURT:** All right. So I think for him that would
2 be the only legal -- the only objection to the guidelines that
3 remain, correct?

4 **MR. GARZA:** That's correct, Judge.

5 **THE COURT:** All right, okay. All right, so then
6 again we'll come back to Mr. Felix Hernandez. Let us move then
7 to Mr. Rene Hernandez. Okay, and for Mr. Rene Hernandez, I
8 will start out by saying that he had the (b)(5) enhancement as
9 well as the (b)(6) enhancement, so the question to address
10 there is whether there is separate conduct for the (b)(5). And
11 in that regard --

12 **MR. LOPEZ:** Your Honor, the Government doesn't
13 believe that there's separate conduct in relation to this
14 Defendant.

15 **THE COURT:** All right, so in that regard then the
16 Court will not impose -- and I don't -- there's been an
17 objection to the trafficking offense. I think it's appropriate
18 to leave the trafficking one but to remove the other --

19 **MR. ROMERO:** (Indiscernible)

20 **THE COURT:** -- illegal activity under 67. So there
21 will be no enhancement under paragraph 67 under (b)(6).

22 **MR. ROMERO:** Okay, your Honor, and I think that
23 satisfies my objection on the trafficking in firearms.
24 Understanding the Court's prior ruling, so there's no need for
25 us to go over that.

1 **THE COURT:** Okay.

2 **MR. ROMERO:** With regards to the specific -- I didn't
3 make an objection, your Honor, to the specific offense
4 characteristics but if -- I did not become aware of this until
5 we had the agent on the stand, that both Mr. Cervantes and
6 Mr. Hernandez were purchasing at the same time. And it wasn't
7 Cervantes purchasing for Mr. Hernandez but they were both
8 purchasing for Mr. Murillo. Remember when I asked them to put
9 that up there? So while it's true that he did purchase eight
10 firearms and that does put him in the other category, the four-
11 level enhancement seems a little high. So with leave I would
12 make that objection, your Honor.

13 **THE COURT:** But he actually purchased eight --

14 **MR. ROMERO:** Eight, yes, ma'am.

15 **THE COURT:** -- himself.

16 **MR. ROMERO:** Yes, ma'am.

17 **THE COURT:** So that would still put him in that plus
18 four.

19 **MR. ROMERO:** I'm just suggesting, your Honor, that
20 giving the full four when it was at the very minimum is --

21 **THE COURT:** The guidelines --

22 **MR. ROMERO:** -- very severe.

23 **THE COURT:** -- don't provide for a half point or even
24 a one point. It goes from six --

25 **MR. ROMERO:** Yes, ma'am.

1 **THE COURT:** -- I guess from two to four to six.

2 **MR. ROMERO:** All right.

3 **THE COURT:** So that objection is overruled.

4 **MR. ROMERO:** Yes, ma'am. And then my next objection
5 is adjustment for role in the offense. I think it's pretty
6 clear in this case based upon the testimony by the agent that
7 with regards to Ms. Sandoval, Mr. Ruiz was paid a finder's fee
8 for, you know, getting her involved in this case. This is a --

9 **THE COURT:** In that regard, I'll interrupt you. I
10 think it should be a plus two. And I don't know if the
11 Government has a position --

12 **MR. LOPEZ:** The Government agrees, your Honor.

13 **THE COURT:** Okay, so what I'm looking at is a plus
14 two, Mr. Romero.

15 **MR. ROMERO:** And, your Honor, that's what I asked --

16 **THE COURT:** Okay.

17 **MR. ROMERO:** -- in the objection, so --

18 **THE COURT:** Okay, so the Court will do a plus two as
19 to the role enhancement there. So then for --

20 **MR. ROMERO:** And the Court's already ruled on the
21 acceptance of responsibility and the other point.

22 **THE COURT:** The -- as to all the Defendants, the
23 Court will grant the third point to the extent that it applies.
24 I don't remember in this case, we had I think maybe one
25 defendant where that was an issue, but I don't -- I'll look at

1 it individually. But he does get the acceptance. So what I
2 have then for Mr. Hernandez --

3 **MR. ROMERO:** Is a 30?

4 **THE COURT:** Let me --

5 **MR. LOPEZ:** I have a 27-1 after acceptance.

6 **MR. ROMERO:** Yes, yeah.

7 **(Pause)**

8 **THE COURT:** I agree, 27, and so the guideline range
9 is -- I keep pulling the chart and I keep --

10 **MR. LOPEZ:** Seventy to 87, your Honor.

11 **THE COURT:** -- hiding it away.

12 **MR. ROMERO:** Seventy to 87.

13 **THE COURT:** Okay, 70 to 87 for Mr. Hernandez, okay.

14 **MR. LOPEZ:** That's correct, your Honor.

15 **THE COURT:** All right, then let's move to
16 Mr. Murillo. All right, let me get to your objections here. I
17 will say there's -- there are a lot of objections that are
18 factual in nature, and certainly to the extent that any one of
19 those applied to any of the Court's determinations, you know,
20 I'll rule on them. But to the extent that there are sort of --
21 some of them going generally to some of these objections, I'll
22 sort of encompass them within the ruling on the objection.

23 **MR. BALLESTEROS:** And that would be one through nine,
24 Judge. Those were more factual and for clarification purposes.
25 And, Judge, I'd also like to note for the Court that

1 Mr. Murillo has accepted responsibility on this case --

2 **THE COURT:** And did we get something from him? I
3 didn't have it at --

4 **MR. BALLESTEROS:** I will tender to the Court a
5 document signed by Mr. Murillo on January 25th of 2017 and --

6 **THE COURT:** Was that ever filed with the Court or
7 what?

8 **MR. BALLESTEROS:** And, Judge, there was some
9 confusion on my part. There was several filings in May. We
10 called the Court's staff and requested or asked how to file the
11 acceptance with your court, but I believe it was never done.
12 But because some of the filings in May were sealed, I couldn't
13 verify that yesterday. It probably wasn't.

14 **THE COURT:** Yeah.

15 **MR. BALLESTEROS:** And just to be sure, I had my
16 office file it today in the morning and I'm tendering --

17 **THE COURT:** All right.

18 **MR. BALLESTEROS:** -- a copy of it to the Court.

19 **THE COURT:** It is sufficient, the Court will grant
20 the two points on the acceptance. And it has been filed as --

21 **MR. BALLESTEROS:** It was filed today --

22 **THE COURT:** Okay.

23 **MR. BALLESTEROS:** -- in the morning before 8:30.

24 **THE COURT:** So if it was filed, then I'll give you
25 back the original copy then.

1 **MR. BALLESTEROS:** Okay.

2 **THE COURT:** Okay.

3 **MR. BALLESTEROS:** And then, Judge, on Mr. Murillo, I
4 think the Court has addressed it on the double-counting as far
5 as paragraph --

6 **THE COURT:** To the extent that both are the going to
7 Mexico, yes. If there's a separate independent basis, then
8 obviously that's a different situation. And, again, we have
9 the issue as far as Rene Hernandez here. And I guess we didn't
10 specifically address that --

11 **MR. LOPEZ:** Your Honor, I didn't address that with
12 Mr. Hernandez because I felt like that was taken care of in his
13 base offense level so I didn't want it double-counting in that
14 situation.

15 **THE COURT:** Right.

16 **MR. LOPEZ:** And in regards to Mr. Murillo, because of
17 the individual that he subsequently transferred it to, I can't
18 identify whether he had any knowledge of whether that
19 individual was a prohibited person. In this case, I feel like
20 it also as well as based on the Court's prior ruling would
21 result in double-counting. I don't have an alternative base
22 for Mr. Murillo, other than the exportation.

23 **(Pause)**

24 **THE COURT:** Okay, so then we -- as to Mr. Murillo,
25 though, again we will not apply paragraph 67, the (b)(6)

1 enhancement.

2 **MR. BALLESTEROS:** And if I may proceed then with the
3 adjustment for the role of the offense. The PSR classified
4 Mr. Murillo as a plus four, leader/organizer of five or more
5 individuals. There has been testimony -- and the PSR refers to
6 Pedro Ruiz who was never indicted or charged. There's been
7 conflicting or different testimony, and even in the
8 Government's chart, as to whether or not that qualified as the
9 -- as five individuals or not, so we would respectfully ask the
10 Court to consider Mr. Murillo as a plus two instead of a plus
11 four.

12 **THE COURT:** I'm not sure when you say whether that
13 qualified as another individual, but clearly the testimony was,
14 and what's reflected in the PSR, is that Mr. Ruiz was involved
15 in the recruitment of Ms. Sandoval, that he -- you know, and I
16 don't recall reading anything that he himself actually
17 approached, but certainly he was involved and he received a
18 finder's fee so to speak for that recruitment, so clearly he
19 would be somebody that is a participant here and --

20 **MR. BALLESTEROS:** Judge, and if I may, it speaks
21 specifically to Mr. Ruiz. That wasn't indicated in any of the
22 reports provided by the Government. It is our position
23 Mr. Ruiz is a cousin of Mr. Murillo, he dated Ms. Sandoval, he
24 mentioned Ms. Sandoval as having potentially dealings with
25 weapons, and Mr. Murillo approached her. And so there was --

1 it's our position that there was no finder's fee, that they
2 never got together and were -- he was introduced to
3 Ms. Sandoval by Mr. Ruiz but the relationship with Mr. Murillo
4 and Ms. Sandoval, I know it's hard to decipher that from the
5 reports and then based on the testimony as well, but it's our
6 position that he never received a finder's fee and that he
7 never introduced Ms. Sandoval to Mr. Murillo for the purpose of
8 purchasing weapons. They were introduced because they're
9 related and they hung out together and they were acquainted
10 that way.

11 **THE COURT:** Well, the report does indicate, you know,
12 and maybe it doesn't say specifically Pedro Ruiz introduced
13 Sandoval to Murillo for the purposes of, so I will admit that,
14 but nonetheless it does indicate that he made the
15 introductions, that then later she met with Ruiz and Murillo I
16 think before they even exchanged the rifles, that they advised
17 her about filing the false report. So, again, whether or not
18 he's paid is not dispositive, but the fact is that he is a
19 participant here and maybe if he were charged you might end up
20 only with an aiding and abetting at least. But certainly I see
21 here that he is also a participant here. But -- so that's part
22 of it, but the other one is also looking at the otherwise
23 extensive. I mean, look at what we have here. I mean, --

24 **MR. BALLESTEROS:** And I --

25 **THE COURT:** -- certainly this is otherwise extensive.

1 **MR. BALLESTEROS:** And, Judge, again on the backend of
2 then misleading law enforcement making up this report, that
3 might be true but, again, it was done separately. Whether
4 Ms. Sandoval sought advice from Mr. Ruiz, it was independent --
5 our position is that it was independent from Mr. Murillo.

6 Otherwise extensive, that's where I thought the Court
7 was going to be focusing on based on the involvement of
8 Mr. Murillo. Again, at this point, there are several weapons
9 that were purchased.

10 **THE COURT:** Okay.

11 **MR. BALLESTEROS:** Most of them -- it's our
12 position --

13 **THE COURT:** I think this is one case where we could
14 say a multitude of weapons, not just several.

15 **MR. BALLESTEROS:** My wife does not like that word,
16 Judge, because I use it too often in my -- on my behalf. But
17 multiple weapons were purchased and I just believe that it's
18 our position that it was being done through Mr. Cervantes. I
19 know the testimony is a little bit different on that. And then
20 other individuals were also purchasing and making a quick buck.
21 And so if the Court is going to overrule it based on that, we
22 certainly understand.

23 **THE COURT:** I really do think it's -- but I don't
24 know if there's anything that the Government would add.

25 **MR. LOPEZ:** Your Honor, the only thing that the

1 Government would add is the Government does believe that this
2 is otherwise extensive given the nature of the scheme. But in
3 addition, your Honor, there's other individuals that would meet
4 the five people. You have Alexander Cardenas (indiscernible)
5 and Mariano Garcia who's another Defendant in this case who
6 also purchased guns for this individual. We're clearly over
7 five.

8 **THE COURT:** I agree. That objection is overruled.

9 **MR. BALLESTEROS:** And then the accounting of the
10 weapons, Judge. I know this is very difficult for the agent
11 and for the prosecution as it is for the Court and as it was
12 for us in determining the actual amount of weapons. Just based
13 on the agent's testimony and the Government's chart, we've
14 requested it be reduced to less than 25 instead of over 25.

15 **THE COURT:** In that regard, the Court was certainly,
16 you know, very careful as it went through the report and in
17 considering the testimony. I think that the 25 is established
18 at the very, very least because I think -- and at least from
19 your cross examination it didn't appear that you effectively
20 disputed the 18, so we look at that to begin with. And that 18
21 does not include the four weapons subject of Count One. And I
22 understand your -- and I do understand your position, but let
23 me finish here. Okay, so it doesn't include those four, okay.
24 And then as I understood it, he was arrested with one weapon as
25 well.

1 **MR. LOPEZ:** That's correct, your Honor.

2 **THE COURT:** Okay, so it doesn't include that one as
3 well. But then we have the evidence clearly that Felix
4 Hernandez and --

5 **MR. LOPEZ:** Mariano Garcia.

6 **THE COURT:** -- Garcia also were involved in the
7 purchase of weapons for Mr. Murillo, and between those two, if
8 I recall correctly, the total there --

9 **MR. LOPEZ:** Mariano Garcia had nine, --

10 **THE COURT:** Nine.

11 **MR. LOPEZ:** -- three of which we can directly
12 attribute to part of Mr. Murillo. Felix Hernandez had 15.
13 While the Government's not able to separate exactly how many
14 were purchased for Mr. Murillo or Mr. Zamudio, the Government
15 can say at least one of those was purchased for Mr. Murillo.

16 **THE COURT:** Yeah, so I think between all of those, I
17 have no doubt that the evidence here establishes, you know, the
18 -- actually I think it may be more than 28, but certainly at
19 least the 25.

20 **MR. BALLESTEROS:** And, Judge, I guess that was part
21 of the point that we were trying to make with the chart. The
22 15 that were included on the -- on Hernandez already included
23 the seven from --

24 **THE COURT:** Cervantes.

25 **MR. BALLESTEROS:** -- Cervantes.

1 **THE COURT:** Correct, no, I understand that. So we
2 have the seven from Cervantes, the eight from Hernandez, and
3 the three from Sandoval, so that's --

4 **MR. BALLESTEROS:** That's 18.

5 **THE COURT:** -- 18 right there.

6 **MR. BALLESTEROS:** And then the ones he was involved
7 in the accident prior to this investigation, those are four
8 that were also attributed there, --

9 **THE COURT:** I --

10 **MR. BALLESTEROS:** -- plus the one that he was
11 arrested with.

12 **THE COURT:** I understand that. So what I'm saying is
13 that there's five weapons there, okay, but he -- even
14 considering sort of a -- some fluctuation there, then we have
15 between Hernandez and Garcia also other weapons being purchased
16 here --

17 **MR. BALLESTEROS:** I just respectfully think that
18 those weapons on the other Hernandez, Felix, who doesn't know
19 my client, and Garcia, that those -- they don't have a way to
20 link them other than speculating that he was buying for --

21 **THE COURT:** No. Well, no, we have the Defendants
22 themselves as far as, you know, some of the statements. And,
23 again, I recognize what the agent testified to, that there was,
24 you know, some statements that were to begin with flat out
25 false, some statements that were inconsistent, but they sort of

1 put all of this together and tried to come up with the picture
2 that can sort of rise from all of that, and I do believe that
3 there is sufficient evidence here to establish at least 25 as
4 to Mr. Murillo. All right, so that objection is overruled.
5 And I think that took care of the legal objections.

6 **MR. BALLESTEROS:** That is correct, your Honor.

7 **THE COURT:** Okay, all right. So then for
8 Mr. Murillo, I think the only one that was sustained was as to
9 paragraph 67. We have the acceptance now so where do we end
10 for --

11 **MR. LOPEZ:** A 31-1, your Honor, I believe.

12 **THE COURT:** Is that what you come up with?

13 **U.S. PROBATION OFFICER TIJERINA:** That's correct,
14 your Honor.

15 **THE COURT:** Okay, that puts us at 108 to 135. Of
16 course, we're at the ten-year maximum so 120 really. Okay, all
17 right, having then taken care of the legal objections, I think
18 I'm going to work backwards and I'll start with Mr. Murillo.
19 And at this time let me have all of the Defendants go ahead and
20 stand up and raise your right hand to be sworn in so that I
21 don't inadvertently forget somebody. Each one of you please
22 raise your right hand to be sworn in.

23 **(Defendants sworn)**

24 **THE COURT:** All right, thank you. Then other than
25 Mr. Murillo, you may be seated. Okay, then as to Mr. Murillo,

1 Mr. Ballesteros, anything else that you want to add?

2 **MR. BALLESTEROS:** Just --

3 **THE COURT:** And I'm sorry, one other thing. We also
4 have forfeiture so any one of the Defendants can also --

5 **MR. LOPEZ:** The forfeiture is only as to Mr. Murillo,
6 your Honor.

7 **THE COURT:** Okay, so you can address that as well.

8 **MR. BALLESTEROS:** Yes, Judge. And so we would ask
9 the Court to consider the 3553(a) factors on Mr. Murillo. We
10 submitted a sentencing memo reflecting that Mr. Murillo has had
11 lawful employment since the age of 16. He has two children,
12 his wife, who's present along with his mother and friends and
13 family. One of his sons does -- was diagnosed at the age of
14 one, which is around the time when Mr. Murillo kind of got his
15 life back together, he stopped doing drugs, stopped smoking
16 marijuana, and right now his son is in remission. There was
17 several letters of support from his teachers and his doctors
18 indicating how much support Mr. Murillo actually provided to
19 both of his children. So we'd ask the Court to consider that
20 in determining Mr. Murillo's sentence, if there's a potential
21 for variance or departure there. I think Mr. Murillo also
22 provided a letter to the Court and would like to say something.

23 **THE COURT:** Mr. Murillo?

24 **DEFENDANT MURILLO:** Yes, your Honor. I want you to
25 know that I regret doing what I did. I know it's wrong and I

1 will never do it again. I know I have to face the consequences
2 of my actions. And if you will find it from the kindness of
3 your heart to let me be home by the time my son graduates from
4 elementary, which is (indiscernible) I would really appreciate
5 it. I just don't want to miss out that much time for my little
6 boy who's growing up. I know I should have thought about that
7 before getting in trouble. The reason why I did that was to
8 support my family. But I promise, your Honor, that I -- that
9 when I get out, I will work hard to provide for my family.
10 That's all I have to say, your Honor.

11 **THE COURT:** I thank you. Anything from the
12 Government as to Mr. Murillo?

13 **MR. LOPEZ:** Yes, your Honor. The Government does
14 believe -- the Government understands that a guideline sentence
15 is a stiff sentence in light of this Defendant's criminal
16 history, but nonetheless the Government does believe that a
17 guideline sentence is appropriate. This is a Defendant who
18 trafficked multiple firearms. And the history of it is what I
19 think is probably most important and most telling, in 2012 this
20 Defendant was involved in a stolen vehicle report that involved
21 the trafficking of firearms to Mexico to cartel bosses in
22 Mexico, and fortunately for the Defendant was not prosecuted
23 federally or on the State side for that action. Nevertheless,
24 the Defendant still doesn't understand that, continues to be
25 involved in other activity. He gets arrested in connection

1 with the 55 kilogram cocaine load, and despite being on bond,
2 despite being under indictment, still continues to engage in
3 possessing firearms, not to mention straw purchasing firearms
4 and being involved with other individuals straw purchasing
5 firearms. Even after the arrest warrant is issued, he again is
6 found after he's been interviewed by ATF agents with other
7 firearms. This Defendant simply doesn't learn and is a
8 defendant that has ties to the cartel with related gun violence
9 and significant amounts of guns, your Honor. The Government
10 believes that a guideline sentence is appropriate in light of
11 the actions that he's taken.

12 **THE COURT:** Mr. Murillo, the Court is -- was there
13 something else?

14 **MR. BALLESTEROS:** We would like for this case to run
15 concurrent with any other case that might be pending, Judge.
16 And there was mentioned I think in the sentencing memo that the
17 Defendant, Mr. Murillo, be considered for the RDAP program as
18 well.

19 **THE COURT:** All right, thank you. Mr. Murillo, the
20 Court has considered all the information presented here, both
21 by way of the presentence investigation report and what we've
22 heard here live in the courtroom. And I'll start out with the
23 fact that I recognize that you are young, and I recognize that
24 many, many times young people, you know, give little thought to
25 consequences of their action and give little thought to the

1 future, that whatever they're doing now may sort of hold. But
2 I think this is one of those cases, Mr. Murillo, where your age
3 really does not speak to the offense here. We have a situation
4 here -- and I will begin, you know, I was troubled as I read
5 the report with the 2012 conviction for false report. You
6 know, I can't deny that that troubled me. And part of what
7 concerned me there of course is the knowledge. And putting
8 aside, let's -- assuming for a moment that, you know, that
9 happened in 2012 and that between then and 2015 you were
10 completely clean of anything else; although, again, we do have,
11 you know, an indication maybe otherwise. But nonetheless, just
12 putting that aside, nonetheless I think the knowledge is there
13 already about what we have going on with the cartels and with
14 weapons and with guns going there. And so then we have you
15 involved in this offense where I think rather than sort of
16 straightening up because of your knowledge from 2012, you
17 actually become a little bit more sophisticated in this offense
18 because of your knowledge from 2012. That is that in this
19 offense, rather than you specifically going out and, you know,
20 attempting at least you can't at this point in time purchase
21 the weapons but, you know, you go out and involve yourself by
22 getting others to purchase these weapons. And we're not
23 talking here again about, you know, two or three. We're
24 talking here about a multitude. I've only held you accountable
25 for 28. I think that's a very conservative number. But I

1 think it was clear that you understood fully what was involved
2 here, that you had no hesitation about doing it, Mr. Murillo.
3 And I don't doubt that you were doing it for the money. It
4 sounds like a very lucrative business. But there are scores of
5 people here -- not scores, thousands of people here in the
6 Valley who struggle financially every single day. And it is
7 not an excuse to say, well, I engaged in criminal activity
8 because my family needs the money. If that was the case, then
9 I would say that a majority of people in the United States
10 would be criminals. And that is not the case. People struggle
11 day by day and manage how they can. And sometimes families go
12 hungry, sometimes electricity is turned off, sometimes they
13 don't get to the doctor, but they don't turn to criminal
14 activity. And I think in your case, it may have been in part,
15 you know, to provide for your family but I think part of it was
16 also just, you know, in your view this was easy money to be
17 made. It causes problems, Mr. Murillo, not simply in Mexico
18 but it causes problems here as well. And though somewhat
19 sporadic, we have instances here in the Valley now where the
20 cartels execute individuals and, you know, they're generally
21 individuals also involved in criminal activity. But we do not
22 believe in vigilante justice here in the United States. And
23 some of this, you know, is all, you know, related to drug
24 trafficking obviously, but part of it is because of the fact
25 that they are more and more getting their hands on weapons that

1 this is possible.

2 Under all the circumstances here, Mr. Murillo -- and
3 the Court has considered all the 3553(a) factors here -- the
4 Court does believe that a sentence within the guideline range
5 is necessary. Again, in doing so I have taken into account not
6 just the guidelines themselves but, you know, the particular
7 facts as they apply to you. And even considering your youth,
8 Mr. Murillo, the Court believes that it is necessary to
9 sentence you to something that is not completely at the low end
10 of the guideline range. The Court is going to sentence you to
11 115 months in custody. In doing so, as I've indicated I've
12 taken into account the 3553(a) factors, but those reflected
13 within the guidelines as well as the need to provide for the
14 safety of the community, to deter further criminal conduct, and
15 to promote respect for the law.

16 The Court is also placing you on a three-year term of
17 supervised release. While you are on supervised release, you
18 are not to commit another Federal, State, and local crime. You
19 are to comply with the standard conditions adopted by the
20 Court. Additionally, you are not to possess a firearm,
21 ammunition, destructive device, or any other dangerous weapons.

22 The Court does also order that you participate in a
23 drug and alcohol treatment program as deemed necessary by the
24 Probation Office, and also that you participate within the
25 Bureau of Prisons, if that is available to you in this case.

1 And although generally I would not order this run
2 concurrent with a State charge that is pending because I've
3 not, you know, calculated that into the guideline range, in
4 light of the lengthy sentence here, Mr. Murillo, the Court will
5 grant that request and order it run concurrent should the State
6 proceed on those drug charges that are currently pending.

7 Mr. Murillo, you do have the right to appeal. If you
8 wish to appeal, you need to advise your attorney. The appeal
9 needs to be filed with 14 days. If you cannot afford an
10 appeal, you may file for *in forma pauperis* in which case the
11 Clerk will file your notice of appeal and the Court will
12 appoint appellate counsel.

13 Anything else as to Mr. Murillo?

14 **MR. LOPEZ:** Your Honor, the Government moves to
15 dismiss the remaining counts, your Honor. And as to the
16 forfeiture, the Government moves that those weapons be
17 forfeited.

18 **THE COURT:** Okay, yeah, I failed to address I think
19 that and fines, correct. Okay, so as to the forfeiture, the
20 Court will also grant the Government's request for forfeiture.

21 And then, Mr. Murillo, part of the Court's sentence
22 is also that you are ordered to pay a \$100 special assessment,
23 and the Court will waive the fine. Anything else?

24 **MR. BALLESTEROS:** That'll be it, your Honor. May I
25 be excused?

THE COURT: You may, thank you.

MR. BALLESTEROS: Thank you.

(Requested transcription regarding Jesus Murillo concluded
at 11:47 a.m.; proceeding continued)

CERTIFICATION

I certify that the foregoing is a correct transcript from the
electronic sound recording of the proceedings in the above-
entitled matter.



August 30, 2017

TONI HUDSON, TRANSCRIBER